121-7

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 173.

ALLINE P. WOODWORTH, APPELLANT,

vs.

JOHN I. BLAIR, THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 23, 1880.

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1 In the circuit court of the United States for the northern district of Illinois. In equity.

To the judges of the circuit court of the United States for the northern district of Illinois:

Your orators, John I. Blair, of Blairstown, New Jersey, who is a citizen of the State of New Jersey the Lackawanna Iron and Coal Company, a corporation created under, and existing by virtue of the laws of the State of Pennsylvania, and a citizen of the State of Pennsylvania; the Delaware, Lackawanna and Western Railroad Company, a corporation created under and existing by virtue of the laws of the State of Pennsylvania, and a citizen of the State of Pennsylvania; Robert Bayard, of Bergen County, New Jersey, who is a citizen of the State of New Jersey, for themselves, and for all other holders of the bonds of the Chicago and Pacific Railroad Company who may come in and become parties to this suit, bring this their bill against the Chicago and Pacific Railroad Company, a corporation created under and existing by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois; Thomas S. Dobbins, of Chicago, who is a citizen of the State of Illinois; George S. Bowen, of Elgin, who is a citizen of the State of Illinois; and John S. Wilcox, of Elgin, who is a citizen of the State of Illinois; the New York State Loan and Trust Company, and the Central Trust Company of New York, receiver of the said New York State Loan and Trust Company, both of which last-named corporations were created under and by virtue of the laws of the State of New York, and are both citizens of the State of New York; John M. Whitman, receiver of the said Chicago and Pacific Railroad Company, Mary Francis, Frederick Kaehler, Charles Kaehler, Marion Munger, William H. Bush, Fowell B. Hill,
2 John W. Walker, John S. Hunt, William F. Hunt, Daniel L. Fleming, Anton Skow Peterson, Axel Isberg, Edward C. Lovell, executor of estate of John Morse, Ezra May, Alexander Hawthorne, Annie P. Adams, Herman H. Hoffman, Seneca D. Kimbark, William H. Sisson, John Suermeier, August Muller, Horace Taber, Ambrose S. Gurnee, Andrew C. Hawkins, Daniel S. Wells, Edwin C. French, Henry L. Norton, Frank E. Walker, all of which said defendants last-above named, commencing with the said John M. Whitman and ending with the said Frank E. Walker, are each and every of them residents of Cook County, in the State of Illinois, and are each and every of them citizens of the said State of Illinois; the Backus Oil Company, a corporation created by the laws of the State of Ohio, and a citizen of the said State of Ohio; the Miami Powder Company, a corporation created by the laws of the State of Ohio, and a citizen of the said State of Ohio; Hiram Burchfield and Edwin Hait, both of DeKalb County, Illinois, and both citizens of the State of Illinois; George Kozier, of Ogle County, Illinois, and a citizen of the State of Illinois; George F. Lewis, of DuPage County, Illinois, and a citizen of the State of Illinois; the American Bridge Company, a corporation created by the laws of the State of Illinois, and a citizen of said State of Illinois; the Chicago & Northwestern Railroad Company, a corporation created by the laws of the State of Illinois, and a citizen of the

State of Illinois; Henry Ultes and Milton Harger, of Kane County, Illinois, who are each citizens of the State of Illinois.

And thereupon your orators complain and say that the Chicago and Pacific Railroad Company is a corporation existing by virtue of the laws of the State of Illinois; that the said corporation was originally created by virtue of an act of the legislature of the State of Illinois approved February the sixteenth, eighteen hundred and sixty-five, under the name of the Atlantic and Pacific Railroad Company, for the purpose of building and operating a railroad from the line between the States of Indiana and Illinois at a point in Cook County, Illinois, to be thereafter selected, by the way of the city of Chicago, Illinois, to the Mississippi River, at any point at or north of the city of of Savannah, to be thereafter located. That the name of said corporation was afterwards, and under the provisions of the statutes in such case made and provided, duly changed to the Chicago and Pacific Railroad Company. That the said company was authorized by its said charter to borrow money not exceeding the amount of its authorized capital stock, for the purpose of constructing said railroad, and to execute, negotiate, or sell bonds therefor secured by mortgage,
3 or deed of trust on all or any part of the property of the said railroad company.

That the authorized capital stock of said company under its said charter was originally two million dollars.

That the said company was authorized under its said charter to increase its capital stock to any amount not exceeding the actual estimated cost of constructing and equipping its said road. That afterward, and on or about the twenty-third day of December, A. D. eighteen hundred and seventy-one, the capital stock of said company was increased to four million dollars, the estimated cost of the construction and equipment of said road being four million dollars.

That on or about the first day of October, A. D. eighteen hundred and seventy-two, the said Chicago and Pacific Railroad Company, then being owner and possessor of a portion of the line of railroad which it was by its charter authorized to construct and maintain as aforesaid, and being engaged in the construction of the said authorized line of railroad, duly made and executed under its corporate seal, in pursuance of a resolution of its board of directors, and caused to be subscribed by its president and secretary, its certain indenture of mortgage, or deed of trust, bearing date on said first day of October, A. D. eighteen hundred and seventy-two, whereby it conveyed in mortgage to the New York State Loan and Trust Company, a corporation created under and then existing by virtue of the laws of the State of New York, and having its principal office and place of business in the city of New York, as trustee to secure a then intended issue of first-mortgage bonds of said railroad company to the extent of three million dollars in United States gold coin, consisting of three thousand such bonds, each for one thousand dollars of such gold coin, numbered consecutively from number one (1) to number three thousand (3,000) inclusive, dated October first, A. D. eighteen hundred and seventy-two, and payable on the first day of October, A. D. eighteen hundred and ninety-two, with interest thereon in the mean time at the rate of seven per cent. per annum, payable in like gold coin semi-annually on the first days of April and October in each year, all and singular the railroad of the said

Chicago and Pacific Railroad Company, as the same then was or should thereafter be surveyed, and as was then being constructed, and leading from Chicago avenue, in the city of Chicago, in said State of Illinois, to the Mississippi River, at any point at or north of the city of Savanna, to be thereafter located in the State of Illinois, a distance of about one hundred and thirty-five miles, together with all and singular the rights of
4 the said railroad company to construct and maintain along said route a railroad, as well as all other rights, privileges, and franchises belonging to said railroad company in, upon, or pertaining to said railroad, including its road-bed laid, or to be laid, its stations or station-houses, depot grounds, rails, fences, bridges, and all other buildings and structures, as well as engine-houses and machine-shops, and all engines, rolling stock, and other property appertaining to said railroad, then owned or possessed or acquired, or thereafter to be owned, possessed, or acquired, and all lands and real estate to which said railroad company might become entitled through or by reason of the construction of said railroad, together with all and singular the rights, privileges, and corporate property and franchises of said railroad company in and to all the above-described premises and property, and certain other things in the said mortgage and trust deed contained.

And by the said indenture it was further provided in substance that if the interest on any of the bonds so issued should not be paid by the said railroad company when the same should become due, and if such interest should remain in arrear for six months, or in case the principal of said bonds or any of them should not be paid at their maturity, then it should be lawful for the said New York State Loan and Trust Company, their successor or successors in the said trust, upon the written request of the holders of not less than one-half part of said bonds then outstanding, to take possession of all and singular the said mortgaged premises, property, and franchises so conveyed, and as attorney in fact or agent of the said railroad company, by themselves, their agent or agents, or substitutes duly constituted, to have, use, enjoy, and to operate the same, making from time to time all needful repairs, alterations, and additions, and after deducting the expenses of such use, repairs, alterations, and additions, and the cost and charges of such taking possession, should on such taking possession, and while so in possession, faithfully apply the proceeds and earnings thereof to the payment of the principal and interest of said bonds issued thereunder remaining unpaid and which had become due; and upon the written request of the holders of at least one-half of said bonds issued under said mortgage, and then remaining outstanding and unpaid, should cause the said premises, real and personal estate, rights and franchises described in said mortgage, to be sold at public auction in the city of Chicago, in the State of Illinois, or in the city of New York, as said trustee might elect, after giving notice of such sale in the manner specified in such mortgage, and on such sale might make, execute, and deliver to
5 the purchaser or purchasers thereof a good and sufficient deed in fee-simple for the same, which deed should be a bar against the said Chicago and Pacific Railroad Company, its successors and assigns, and all persons claiming under them, of all rights, interests, or claims of, in, or to the said described premises, rights, or franchises, or any part thereof.

That the amount of the bid or purchase-money of said sale, less the costs

thereof, might be paid by the outstanding mortgage bonds, or any of them, issued under said mortgage, and the said bonds should be taken and received in whole or in part payment and satisfaction of said bid or purchase-money, according to their value, to be ascertained and determined by the net amount arising from such sale as compared with the amount of the outstanding bonds so issued under said mortgage as aforesaid,

And the said New York State Loan and Trust Company, after deducting from the proceeds of such sale the costs and expenses thereof and of managing said property, should apply so much of the proceeds of such sale as might be necessary to pay the said principal and interest due and unpaid on the residue of said outstanding mortgage bonds issued under said mortgage and not used in the payment of said bid as aforesaid, and should pay over the remainder of said proceeds to the said Chicago and Pacific Railroad Company.

And which said indenture of mortgage or deed of trust contained divers other provisions, conditions, stipulations, and agreements, as by reference thereto will more fully appear.

That at or about the date of said mortgage or deed of trust the said New York State Loan and Trust Company, as such trustee thereunder, accepted the same, and manifested such acceptance by executing said instrument under its corporate seal, attested by the signature of its president; and thereupon, on or about the second day of November, A. D. eighteen hundred and seventy-two, the execution of the said indenture of mortgage or deed of trust by the said Chicago and Pacific Railroad Company, under the corporate seal of said company, with attestation by the proper executive officers thereof, was acknowledged in due form of law by said president and secretary, before an officer duly authorized to take such acknowledgment, and the certificate of such acknowledgment was thereupon by said officer endorsed upon said instrument, so as to entitle the same to be recorded; and thereupon the said mortgage or trust deed was duly recorded in the proper recording offices of the respective counties of the State of Illinois hereinafter specified, viz:

6 In Cook County, on the twenty-fifth day of February, A. D. eighteen hundred and seventy-three.

Du Page County, on the twenty-first day of September, A. D. eighteen hundred and seventy-four.

Kane County, on the twenty-sixth day of October, A. D. eighteen hundred and seventy-four.

And your orators further show that Exhibit A to this bill annexed contains a true copy of the said mortgage or deed of trust, and of the certificates and acknowledgment endorsed thereon, and your orators hereby refer thereto as a part of this bill, and pray that the same may be so taken.

That the said company thereupon issued two thousand of the bonds intended to be secured by the said mortgage or deed of trust, and caused the same to be countersigned by the said trustee, the New York State Loan and Trust Company, being the bonds numbered from one (1) to two thousand (2000), both inclusive, said bonds being dated the first day of October, A. D. eighteen hundred and seventy-two, and being each for the sum of one thousand dollars, payable in gold coin, on the first day of October, A. D. eighteen hundred and ninety-two, with interest at the rate of seven per cent. per annum, payable semi-annually, said interest being evidenced by

forty coupons attached to each of the said bonds, each of said coupons being for the sum of thirty-five dollars in gold coin, and payable on the first days of April and October of each year, principal and interest payable at the agency of the company in the city of New York, all of said bonds being duly signed by R. M. Hough, president of said company, and W. T. Hughes, secretary of said company, and countersigned by the New York State Loan and Trust Company, said bonds being payable to the New York State Loan and Trust Company, or bearer, and all of said interest coupons being duly signed by said W. T. Hughes, secretary, and being payable to bearer, all of which two thousand bonds, with coupons attached, being in the same form, a copy of which is contained in said first-mentioned mortgage hereunto attached and marked "Exhibit A."

That in and by the said mortgage or deed of trust, and for the purpose of better securing the said bonds and the prompt payment of the interest thereupon, the said railroad company did, among other things, agree as follows:

"And the said party of the first part (being the said railroad company) further covenants and agrees to execute and deliver hereafter and from time to time all further reasonable and necessary conveyances to more effectually carry out the intentions of these presents."

7 That it was subsequently deemed necessary and advisable, for the further security of the said two thousand bonds so issued as aforesaid, that the said railroad company should execute and deliver another mortgage or deed of trust to the said New York State Loan and Trust Company, securing the said two thousand bonds so issued under said first mortgage or deed of trust as aforesaid.

That accordingly the said railroad company, on or about the sixth day of November, A. D. eighteen hundred and seventy-four, duly made and executed, under its corporate seal, in pursuance of a resolution of the board of directors, and caused to be executed by its president and secretary, its certain other indenture of mortgage or deed of trust, bearing date on said sixth day of November, A. D. eighteen hundred and seventy-four, whereby it conveyed in mortgage unto the said New York State Loan and Trust Company the property hereinafter described, to secure two thousand of the same bonds in the said first mortgage described, that is to say, the said bonds which were numbered from one (1) to two thousand (2000), both inclusive, with the interest thereon, payable as aforesaid, and secured by the respective coupons attached to said bonds as aforesaid, to wit:

The railway of the said company, as the same was then or might thereafter be surveyed, then made or in the course of construction and thereafter to be made, and leading from Chicago avenue, in said city of Chicago, to the Mississippi River, at any point at or north of the city of Savanna, to be thereafter located, in the State of Illinois, a distance of about one hundred and forty miles, including the right of way and the lands occupied thereby, and all the real and personal estate belonging to said railroad company, and also all the superstructure and tracks upon the said right of way or lands to be thereon placed, and all iron and steel rails, chairs, ties, and other materials placed or used thereon, then or thereafter procured therefor, and also all stations, depot grounds and erections thereon, fences, bridges, viaducts and culverts, and also all engine-houses and machine-shops, with the machinery and tools therein, and all other shops held

or acquired for use in connection with said railway and its business, together with all the locomotives, tenders, cars, and other rolling stock and equipments then owned or possessed or acquired and thereafter to be owned, possessed, or acquired by the said railroad company, all of which things were thereby declared to be appurtenances and fixtures of the said railway, and to be included in and to pass by said mortgage; and also all franchises connected with or relating to the construction, maintenance, or use of the said railway then held or thereafter to be acquired by
8 said railroad company, as well as all corporate and other franchises then possessed or which should thereafter be possessed or acquired by said railroad company, in any way relating to or connected with the said railway; and also all other property, real, personal, or mixed, used on the line of said railroad in constructing or operating the same, together with all and singular the tenements, hereditaments, or appurtenances belonging to said railroad or in any wise appertaining to the said line of railroad, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and all the estate, right, title, interest, property and possession, claim and demand whatsoever, as well in law as in equity, of the said railroad company of, in, and to the same.

And by the said indenture of mortgage or deed of trust last-above described it was provided, in substance, that in case default should be made at any time in the payment of any interest coupons on any of the said bonds so secured by said mortgage, then the holders of such bonds should have the right, at any time after six months had elapsed after such default and demand of payment of such interest coupons, and such default then existing, to elect and declare the principal of said bonds to be due and payable, and that then and in that case the principal of said bonds should then be deemed due and payable to all intents and purposes the same as though the said bonds were due and payable by the terms thereof, anything contained in the said bonds to the contrary notwithstanding.

And that in such case, or in case default should be made in the payment of the principal of said bonds, or any of them, issued or to be issued under said mortgage, when the said bonds should be due and payable, according to the terms thereof, at the request in writing of the holders of at least one-fourth part of the said bonds then outstanding due and unpaid, the said trustee should forthwith declare the principal of all the said bonds secured by said mortgage or deed of trust to be due, and should foreclose said mortgage or deed of trust for the principal of all of said bonds issued under said mortgage and the interest thereon, and enforce payment thereof as speedily as possible.

And the said Chicago and Pacific Railroad Company did, in and by said last-described mortgage, irrevocably authorize and empower the said trustee, on such request, to make sale of all and singular the said premises and property thereby conveyed or intended to be conveyed, at public auction, in the city of Chicago, in the State of Illinois, or in the city of New York, as the said trustee might elect, in the manner and upon the
9 notice in said mortgage prescribed, and upon such sale to convey to the purchaser or purchasers by good and sufficient conveyance all the property so sold, which sale and conveyance should be without redemption, and without any right or claim of the said Chicago and Pacific Railroad Company to the benefit of any valuation or appraisement laws

of said State of Illinois, and said conveyance should be a perpetual bar, as well in law as in equity, to all right or claim of the said Chicago and Pacific Railroad Company, its successors or assigns, and all persons claiming or to claim under or from it or them, to the said property or any part thereof; and such sale and conveyance should vest in the purchaser or purchasers, his, their, or its heirs or assigns or successors, full and absolute title in fee-simple to all the property so sold forever.

And by the said mortgage last described it was further provided and agreed that in case the said trustee should deem it advisable for the interest of the said bondholders to resort to judicial proceedings to foreclose the said mortgage, rather than to advertise and sell as thereinbefore provided, then and in that case said trustee might proceed in any court having jurisdiction of the premises to foreclose the same and the equity of redemption of the said railroad company in said property, and enforce a sale thereof by judicial process, and all provisions and agreements applicable to a sale upon advertisement should be equally applicable to a foreclosure or sale under judicial process.

That thereupon, on or about the said sixth day of November, A. D. eighteen hundred and seventy-four, the execution of the said last-described indenture of mortgage or deed of trust by the said Chicago and Pacific Railroad Company, under the corporate seal of said company, with attestation by the proper executive officers thereof, was acknowledged in due form of law by the president and secretary of the said railroad company, before an officer duly authorized to take such acknowledgment, and the certificate of acknowledgment was by said officer endorsed upon said instrument so as to entitle the same to be recorded; and thereupon the said secondly-described mortgage was duly recorded in the proper recording offices of the respective counties of the State of Illinois hereinafter specified, viz:

In the county of Cook, on the seventh day of November, A. D. eighteen hundred and seventy-four.

In the county of Kane, on the fourth day of January, A. D. eighteen hundred and seventy-five.

In the county of De Kalb, on the sixth day of April, A. D. eighteen hundred and seventy-five.

In the county of Ogle, on the tenth day of June, A. D. eighteen hundred and seventy-five.

And in the county of Du Page, on the tenth day of August, A. D. eighteen hundred and seventy-five.

And your orators further state that Exhibit B to this bill annexed contains a true copy of the said mortgage or deed of trust secondly hereinabove set forth, and of the certificate of acknowledgment endorsed thereon, and your orators hereby refer thereto *or* a part of this bill, and pray that the same may be so taken.

That the said railroad company, on the said sixth day of November, A. D. 1874, in pursuance of a resolution of its board of directors, made its agreement in writing, and deposited the same with the said trustee, in and by which it was expressly agreed and stipulated by the said railroad company that no more bonds should be issued by said company under the said first-mentioned mortgage or deed of trust than the said two thousand bonds, numbered from one (1) to two thousand (2000), so issued as afore-

said, and secured as well by the said first-mentioned mortgage or deed of trust as by the said last-mentioned mortgage or deed of trust, a copy of which said agreement is hereunto attached and marked "Exhibit C." And your orators allege that no more than the said two thousand bonds so numbered from one (1) to two thousand (2000) as aforesaid ever were issued under said mortgages or deeds of trust, or either of them.

And your orator the said Lackawanna Iron and Coal Company represents unto your honors that it is the owner and holder of three certain promissory notes, all signed by the said Chicago and Pacific Railroad Company, all payable to the order of T. S. Dobbins, and by him endorsed, said notes being described as follows: One for the sum of one hundred and eleven thousand nine hundred and thirty-one and $\frac{56}{100}$ dollars, dated Chicago, March the seventeenth, eighteen hundred and seventy-five, payable in six month after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, the said note having been given by said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of one hundred and two thousand nine hundred and thirty-eight and $\frac{60}{100}$ dollars, dated Chicago, September seventeenth, eighteen hundred and seventy-four, payable six months after date, at the National City Bank, New York, with interest at seven per cent. after date, which said last-mentioned note was not paid at the maturity thereof; also one promissory note for
11 the sum of one hundred and twelve thousand and sixteen and $\frac{39}{100}$ dollars, dated Chicago, June the seventeenth, eighteen hundred and seventy-five, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, said last-named note having been given by said company in renewal of its previous note for the sum of one hundred and two thousand nine hundred and thirty-eight and $\frac{60}{100}$ dollars, dated Chicago, September the seventeenth, eighteen hundred and seventy-four, payable nine months after date, at the National City Bank, New York, with interest at seven per cent. per annum after date, which last-mentioned note was not paid at the maturity thereof; also one promissory note for the sum of one hundred and thirteen thousand eight hundred and fifteen and $\frac{77}{100}$ dollars, dated Chicago, September seventeenth, eighteen hundred and seventy-five, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, said last-mentioned promissory note having been given by said company in renewal of its previous note for the sum of one hundred and two thousand nine hundred and thirty-eight and $\frac{60}{100}$ dollars, dated Chicago, September the seventeenth, eighteen hundred and seventy-four, payable in twelve months after date, at the National City Bank, New York, with interest at seven per cent. per annum after date, which said last-mentioned note was not paid at the maturity thereof.

And your orator the said Lackawanna Iron and Coal Company further represents unto your honors that the said railroad company deposited with it, as collateral security to secure the payment of said indebtedness, eight hundred and eighty-two of its first-mortgage bonds, for the sum of one thousand dollars each, two hundred and ninety-four of said bonds having been pledged as collateral security for each of the above-described

three certain promissory notes, being the same bonds originally pledged to secure the payment of the three notes in renewal of which said notes were given as above set forth, which said bonds were numbered as follows, to wit: Bonds numbered twelve hundred and forty-one to two thousand, both inclusive, and four hundred and forty-one to five hundred and forty, both inclusive, and three hundred and seventy-one to three hundred and ninety-two, both inclusive; and which said bonds were a part of the same bonds described in and secured by the said firstly and secondly described mortgages or deeds of trust hereinbefore set forth.

12 And your orator the Delaware, Lackawanna and Western Railroad Company represents unto your honors that it is the holder and owner of three certain promissory notes, all signed by the said Chicago and Pacific Railroad Company, all payable to the order of T. S. Dobbins, and by him endorsed, said notes being described as follows:

One for the sum of ten thousand and thirteen and $\frac{98}{100}$ dollars, dated Chicago, June twenty-ninth, eighteen hundred and seventy-five, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of nine thousand two hundred and seven and $\frac{55}{100}$ dollars, dated Chicago, September twenty-ninth, eighteen hundred and seventy-four, payable in six months after date, at the National City Bank, New York, with interest at seven per cent. per annum after date, which said last-mentioned note was not paid at the maturity thereof.

Also one promissory note for the sum of ten thousand one hundred and seventy-five and $\frac{72}{100}$ dollars, dated Chicago, July twenty-ninth, eighteen hundred and seventy-five, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of nine thousand two hundred and seven and $\frac{55}{100}$ dollars, dated Chicago, September twenty-ninth, eighteen hundred and seventy-four, payable in nine months after date, at the National City Bank, New York, with interest at seven per cent. per annum after date, which said last-mentioned note was not paid at the maturity thereof.

Also one for the sum of ten thousand one hundred and eighty-six $\frac{03}{100}$ dollars, dated Chicago, September twenty-ninth, eighteen hundred and seventy-five, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of nine thousand two hundred and seven and $\frac{55}{100}$ dollars, dated Chicago, September twenty-ninth, eighteen hundred and seventy-four, payable in twelve months after date, at the National City Bank, New York, with interest at seven per cent. per annum after date, which said last-mentioned note was not paid at the maturity thereof.

13 And your orator the Delaware, Lackawanna and Western Railroad Company further represents to your honors that the said Chicago and Pacific Railroad Company deposited as collateral security for

the payment of the indebtedness evidenced by said three notes, fifty-five of the first-mortgage bonds of its company, for the sum of one thousand dollars each, being the same bonds originally pledged to secure the payment of the three notes in renewal of which said notes were given as above set forth, which said bonds were numbered as follows, to wit: Bonds numbered nine hundred and one to nine hundred and fifteen, both inclusive, and from six hundred and eighty-one to seven hundred, both inclusive, and bonds numbered four hundred and eleven to four hundred and twenty, both inclusive, and four hundred and thirty-one to four hundred and forty, both inclusive, and which said bonds were a part of the same bonds described in and secured by the said firstly and secondly described mortgages or deeds of trust hereinbefore set forth; which said three notes last mentioned were originally given by the said Chicago and Pacific Railroad Company to the Oxford Iron Company, of the State of New Jersey, for money due to the said last-named company for iron fastenings furnished by it to said railroad company and used in the construction of the said railroad, and were by the said Oxford Iron Company sold and transferred, before the maturity thereof, to your orator the Delaware, Lackawanna and Western Railroad Company, in good faith, and for a good and valuable consideration; on and the said bonds of the said railroad company so given as security for the said notes to the said Oxford Iron Company were by the said last-named company transferred and delivered to your orator the said Delaware, Lackawanna and Western Railroad Company, with the said notes, and have ever since been held and are still held by the said last-named company as security for the payment of the said notes as aforesaid.

And your orator, John I. Blair, represents unto your honors that he is the holder of four certain promissory notes, all signed by the said Chicago and Pacific Railroad Company, three of said notes payable to the order of T. S. Dobbins, and by him indorsed, and one payable to the order of the said John I. Blair, said notes being described as follows:

One for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, May first, eighteen hundred and seventy-five, payable in four months after date to the order of T. S. Dobbins, and by him indorsed at the Third National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by said Chicago and Pacific Railroad Company, in renewal of its previous note, for the sum of ten thousand dollars, dated September first, eighteen hundred and seventy-four, payable in eight
14 months after date at the National City Bank, New York, which said last-mentioned note was not paid at the maturity thereof.

Also one promissory note for the sum of ten thousand three hundred and thirty-three and thirty-three hundredths dollars, dated Chicago, May first, eighteen hundred and seventy-five, payable in four months after date to the order of T. S. Dobbins, and by him indorsed, at the Third National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of ten thousand dollars, dated Chicago, September first, eighteen hundred and seventy-four, payable in eight months after date at the National City Bank, New York City, which said last-mentioned note was not paid at the maturity thereof.

Also one promissory note for the sum of ten thousand three hundred and thirty-three and $\frac{34}{100}$ dollars, dated Chicago, May first, eighteen hundred and seventy-five, payable in four months after date to the order of T. S. Dobbins, and by him indorsed, at the Third National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said last-mentioned note was given by the said Chicago and Pacific Railroad Company, in renewal of its previous note, for the sum of ten thousand dollars, dated Chicago, September first, eighteen hundred and seventy-four, payable in eight months after date at the National City Bank, New York, which said last-mentioned note was not paid at the maturity thereof.

Also one promissory note for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, October twenty-seventh, eighteen hundred and seventy-five, payable in four months after date to the order of John I. Blair, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum.

And your orator, John I. Blair, further represents unto your honors that the said Chicago and Pacific Railroad Company deposited with him, as collateral security for the payment of the indebtedness evidenced by the three promissory notes firstly, secondly, and thirdly above described, ninety of the first-mortgage bonds of the said company, for the sum of one thousand dollars each, being the same bonds originally pledged to secure the payment of the three notes, in renewal of which said notes were given as above set forth, which said bonds were numbered as follows, to wit: Number one hundred and eighty-one to one hundred and ninety, inclusive; four hundred and twenty-one to four hundred and thirty, inclusive; eight hundred and ninety-one to nine hundred, inclusive; seven hundred and seventy-one to eight hundred, inclusive; one thousand and one to one thousand and thirty, inclusive; and that the said Chicago and Pacific Railroad Company deposited with him, as collateral security for the payment of the note fourthly above described, thirty of the first-mortgage bonds of the said company for one thousand dollars each, said bonds being numbered from one hundred and sixty-one to one hundred and eighty, both inclusive; and from one hundred and ninety-one to two hundred, both inclusive; and which said bonds were a part of the same bonds described in and secured by the said firstly and secondly described mortgages or deeds of trust hereinbefore set forth.

And your orators further represent unto your honors that all of the said notes held and owned by the Lackawanna Iron and Coal Company were given for iron rails used in the construction of said road; that all of said notes, held and owned by the Delaware, Lackawanna and *and* Western Railroad Company, were given for iron fastenings used in the construction of said road; that all of said notes, held and owned by the said John I. Blair, were given for money loaned to said railroad company, which was used in the construction of said road.

And your orator, Robert Bayard, represents unto your honor, that he is the owner and holder of two promissory notes, bearing date the 1st day of January, 1874, made and executed by the said The Chicago and Pacific Railroad Company, and payable to the order of your orator, said Bayard, in eight and twelve months from date respectively, with interest at the

rate of ten per centum per annum after maturity, for the sum of fifty thousand dollars each; that the consideration of said notes was money loaned by said Bayard to the said The Chicago and Pacific Railroad Company, and that no part of the same has been paid, except that said Bayard has realized, from the sale of lands which were conveyed in trust to secure the same, the sum of fifteen thousand dollars, after deducting the expenses attending such sale; and that the balance of said notes and accrued interest thereon is now due and unpaid; that at the time of the delivery of said notes, there were pledged with said Bayard, as security for the payment thereof, two hundred of the first-mortgage bonds aforesaid of said railroad company, with the full complement of coupons attached to each, one hundred of which bonds with attached coupons were pledged for each of said notes. Said Bayard is now the holder of said bonds and coupons for the purpose aforesaid, and said bonds are numbered two hun-
16 dred and fifty-one to three hundred, one hundred and twenty-one to one hundred and thirty, eight hundred and one to eight hundred and ninety, all inclusive.

And your orator, Robert Bayard, further represents unto your honor that he is the owner and holder of four promissory notes, bearing date the 1st day of March, 1876, for the sum of thirty thousand dollars each, made by Thomas S. Dobbins, and payable to the order of J. G. Ogden, junior, each payable three months after the date thereof, with interest at the rate of ten per centum per annum; that, as your orator, said Bayard, is informed and believes, said last-mentioned notes were given in renewal of former notes, which were likewise successive renewals of notes given long anterior to said first day of March, 1876, in consideration of moneys advanced for the account of said railroad company by the State Savings Institution hereinafter mentioned, and for which indebtedness, as the same was from time to time contracted, the bonds hereinafter mentioned were pledged as security; but your orator is unable to state more fully the particulars of such indebtedness or the contracting of the same.

Your orator further represents that said notes bearing date the first day of March, 1876, were endorsed without recourse by said Ogden, and were by your orator, said Bayard, purchased in good faith, and for a full and adequate consideration from the State Savings Institution of Chicago, a banking corporation organized and subsisting under and by virtue of the laws of the State of Illinois, on or about the 17th day of May, A. D. 1876; that as security for the payment of said notes when the same were executed, there were pledged, by said Dobbins, two hundred other of the first-mortgage bonds aforesaid of said railroad company, with the full complement of coupons attached to each; and upon the purchase of said last-mentioned notes as aforesaid, by your orator, said Bayard, and as collateral thereto, he received said last-mentioned bonds and coupons, and has since continued to hold, and now holds the same for the purposes aforesaid, and, except for such security, he would not have purchased said notes last mentioned; that said notes last mentioned are now held and owned by him, and are due and wholly unpaid; said last-mentioned bonds are numbered one to one hundred and twenty, one hundred and forty-one to one hundred and sixty, three hundred and twenty-one to three hundred and fifty, six hundred and twenty-one to six hundred and thirty, seven hundred and fifty-one to seven hundred and seventy, all inclusive.

And your orator, said Bayard, further represents unto your hon-
17 ors, that on the first day of June, 1876, he caused to be presented to the said The Chicago and Pacific Railroad Company, at its office in the city of Chicago, the said four hundred bonds so held by him, as aforesaid, with the coupons thereto attached, and to be demanded of said railroad company payment of so many of said coupons as were then, by the terms of the same, due and payable; and that payment of the same or any of them was then and there refused. Your orator further says that he became a party complainant to the bill herein referred to, and which was filed in this court, and in which a receiver of said railroad company was prayed.

And your orators further represent unto your honors that none of the interest coupons were detached from any of the said bonds so pledged to your orators as collateral security, as aforesaid. but that all of the interest coupons remained attached to said bonds, and formed a part of your orators' said security for the payment of your orators' indebtedness, as above described.

That all of the said promissory notes so given by the said Chicago and Pacific Railroad Company to your orators, as above particularly set forth, are long past due, but have not been paid, nor any part thereof, nor has any interest been paid to your orators upon any of the said promissory notes, or upon any of said coupons.

And your orators further show unto your honors that the said bonds so deposited with them as collateral security as aforesaid have no market value, and that your orators are unable to sell the same in satisfaction of your orators' said indebtedness, and that your orators' only remedy in the premises is to enforce the collection of the said securities from the property of the Chicago and Pacific Railroad Company pledged to secure the said bonds, as by its mortgages, or deeds of trust, more fully appears.

And your orators further show that the said Chicago and Pacific Railroad Company did not pay the semi-annual interest on the said bonds for two million dollars, so issued as aforesaid, which fell due April first, A. D. eighteen hundred and seventy-three, or any part thereof, but in the payment thereof failed and made default, although payment thereof was duly demanded by the holders of the said bonds and of the said coupons for such semi-annual interest, which had been thereto attached.

And your orators further show that in like manner the said Chicago and Pacific Railroad Company did not pay the semi-annual installments of interest on the said bonds for two million dollars, which fell due the first day of April and the first day of October, eighteen hundred and seventy-three, and April first and October first, eighteen hundred and seventy-four, or which fell due April first, or October first, eighteen
18 hundred and seventy-five, or April first, eighteen hundred and seventy-six, or any part thereof, but in the payment of such respective installments of interest on the said two million dollars bonds the said railroad company then and there wholly failed and made default, although in respect of each of said installments payment of such semi-annual interest was duly demanded by the holders of the said bonds and of the said coupons for such semi-annual interest which had been thereto attached, and that all the interest on all the said bonds and coupons so held by your orators respectively, as aforesaid, which fell due on the first day

of April, A. D. eighteen hundred and seventy-three, and all interest since accrued, up to the date of the filing of this bill, now remains wholly in arrears and unpaid, although payment of the same has been duly demanded, as your orators are informed and believe.

And your orators aver that they are together the holders of fourteen hundred and fifty-seven of the said bonds, being a considerable number more than the one-half part of all the bonds so issued as aforesaid, and are entitled to collect and receive all the interest thereon. And that the remainder of the said two thousand bonds, that is, five hundred and forty-three of said bonds, are outstanding in the hands of other parties than your orators.

That the said Chicago and Pacific Railroad Company did, in and by the said mortgages or deeds of trust, among other things, covenant and agree, in substance, as follows: That if the interest on any of the bonds so to be issued should not be paid by the party of the first part (that is the said railroad company), when the same should become due, and if such interest should remain in arrears six months, or in case the principal of said bonds, or any of them, should not be paid at their maturity, then it should be lawful for said party of the second part (that is the said trustee, the New York State Loan and Trust Company), their successor or successors in the trust, upon the written request of the holders of not less than one-half part of said bonds then outstanding, to take possession of all and singular the said premises, property, and franchises so conveyed, and as attorney in fact, or agent of the said party of the first part, by themselves, their agent or agents, or substitutes, duly constituted, to have, use, enjoy, and operate the same, making, from time to time, all needful repairs, alterations and additions, and after deducting the expenses of such use, repairs, alterations and additions, and the cost and charges of such taking possession, and a reasonable compensation for the services of said trustees, they should, on such taking possession and while so in possession, faithfully apply the
19 proceeds and earnings thereof to the payment of the principal and interest of said bonds issued thereunder remaining unpaid, and which might have become due.

And your orators aver that they are the holders of more than one-half of the bonds so issued and now outstanding under said mortgages or deeds of trust, and each of them.

And your orators further show that they are informed and believe, and are advised by their counsel to charge, that the said New York State Loan and Trust Company, mentioned in the said two indentures of mortgage or deed of trust, is a foreign corporation, having no residence or place of business in the State of Illinois; that it has not by its charter, which exists only in and by virtue of the laws of the State of New York, power or authority to receive or execute trusts of the character attempted to be assumed by it, and attempted to be granted to it, in and by the two trust deeds or indentures of mortgage above mentioned, and that it is not a railroad corporation even in the State of New York, and cannot exercise or perform the duties thereof, either in the State of New York or elsewhere, and the policy of the laws of the State of Illinois prohibits it from taking, receiving, or holding the title to the real estate, and in like manner the title to the franchises granted to the said Chicago and Pacific Railroad Company by the laws of the State of Illinois, as aforesaid, and from tak-

ing, using, or operating said railroad, its franchises and property attempted to be granted to it by the said two trust deeds or mortgages, and that it has no interest in said property, or any of it, and never had any interest therein, except as trustee as aforesaid.

Whereupon, your orators charge that the said *said* indentures of mortgage or trust-deeds are, as to the said trustee, utterly and entirely void and of no effect, and that as to your orators and the other holders of said mortgage bonds, said mortgages or deeds of trust are to be construed and held to be in the nature of covenants, to stand subject to the uses therein declared as declarations of trust, to the use of the said holders of said mortgage bonds, and to have no other effect or force.

And your orators further show unto your honors that the said New York State Loan and Trust Company, since the execution of the said indenture of mortgage or deeds of trust to the said corporation as aforesaid, has, as your orators are informed and believe, been dissolved, and its corporate existence has ceased, and its effects are in the hands of a receiver.

That the said dissolution of the said New York State Loan and Trust Company was made voluntarily, on the application of a majority of its directors at a special term of the supreme court, in the city of New York, before Judge Donahue, on the eighteenth day of May, A. D. eighteen hundred and seventy-six, after the debts of the said corporation had been paid, and for the purpose of having a receiver appointed under whose direction the remaining effects of said corporation might be ascertained and divided among its stockholders, and that the Central Trust Company of New York was on said day appointed receiver of the effects of said corporation; and that the said New York Loan and Trust Company, the trustee named in said deeds, being so dissolved, and its corporate existence ended, there is, therefore, now no trustee in existence under said mortgages or deeds of trust who can enforce or fulfill the said trust, or any of the conditions thereof, or who can make a sale of the said mortgaged property, or institute proceedings to foreclose the same in a court of equity, in conformity with the provisions and agreements in said mortgages or deeds of trust contained, and your orators have no means of enforcing the said securities and making the same available by a foreclosure and sale of said mortgaged premises for the payment of their said indebtedness, excepting by applying unto your honors for that relief to which under the terms and provisions of the said mortgages or deeds of trust your orators are justly entitled.

And your orators further show unto your honors that the said New York State Loan and Trust Company, and the said receiver thereof, for the reasons herein last above set forth, wholly refuse to institute proceedings to foreclose the said mortgages or trust-deeds, or either of them, either by sale or by judicial process, or otherwise, although duly requested by your orators so to do.

And your orators further allege, upon information and belief, that there is a large amount of real estate, docks, wharves, depot grounds, &c., the title to which stands in the name of said T. S. Dobbins, or of the said T. S. Dobbins & Company, or of some of the members of said firm, but which is held by him or them in trust only for the said railroad company, and really belongs to the said railroad company, and was purchased with

the money of said railroad company, and for the use and benefit of said railroad company, and should be applied and appropriated to the payment of the debts of said railroad company, and forms a considerable part of your orators' said security for their said indebtedness.

And your orators fear that the real estate may be wasted and misapplied by the said Dobbins and Company, and desire that the rights of the said railroad company in the said property should be ascertained and determined, and that the said real estate should be conveyed to the said
21 railroad company, and subjected to the lien of the said mortgages or deeds of trust.

And your orators further show unto your honors that on the 27th day of May, A. D. eighteen hundred and seventy-six, your orators, together with Moses Taylor and the National City Bank, exhibited and filed in this court their original bill of complaint against the defendants, the Chicago and Pacific Railroad Company, and the said Dobbins, Bowen, and Wilcox for relief in respect of the matters in said bill set forth, a copy of which said bill is hereunto annexed, marked "Exhibit D," to which your orators crave leave to refer as a part of this bill, and pray that the same may be so taken.

And your orators further show unto your honors that on or about the first day of June, A. D. eighteen hundred and seventy-six, a certain amendment was duly made to the said bill, in and by which said amendment the said complainants therein further represented that it was in said bonds, and in each of them, provided that in case default should be made by said railroad company in the payment of any of the interest coupons due upon said bonds, or either of them, for six months after demand made upon the said railroad company for the payment of such interest coupons, the holder of such bond or bonds should have the right to declare the principal of said bond or bonds to be due and payable. That the said interest coupons were by the terms thereof made payable at the agency of the said Chicago and Pacific Railroad Company, in the City of New York; that the said railroad company had no agency in said City of New York, where such coupons could be presented, and the payment thereof demanded, and had had no such agency since the said bonds were delivered to the said complainants.

That the said complainants did therefore by their said bill make demand of the said Chicago and Pacific Railroad Company for the payment of all of the interest coupons due and unpaid upon each and all of the said bonds so held by the said complainants in said bill, and by each of them, that is to say, the interest coupons attached to the said bonds, and each of them falling due upon the first days of April and October, in the years eighteen hundred and seventy-three, eighteen hundred and seventy-four, and eighteen hundred and seventy-five, and on the first day of April, eighteen hundred and seventy-six, in conformity with the provisions and requirements of the said bonds, and for the purpose, in case such interest coupons, or any of them' or any part thereof, should remain due and unpaid for the space of six months after such demand thereof thereby
22 made, of declaring the said principal sum and sums named in said bonds, and each of them, together with the interest thereon, to be due and payable, and the payment thereof might be immediately thereafter enforced by a foreclosure and sale of the said property described in

and conveyed by said mortgages as security for said bonds. And your orators further show that the said defendants duly appeared in the said suit, and on the twentieth day of December, A. D. 1876, filed their answers to the same.

That on the twenty-fourth day of May, A. D. eighteen hundred and seventy-six, an order, or decree of this court, was entered in the said suit, all of the said defendants to said suit being present and making no objection thereto, appointing John M. Whitman, of the said city of Chicago, receiver of all the property and assets of the said Chicago and Pacific Railroad Company, a copy of which decretal order of this court so entered in said suit is hereunto annexed, marked "Exhibit E," and the said John M. Whitman, after giving security as required by said order, entered into possession of all the said railroad property and assets, and from thence hitherto has been and still is in the possession of the said railway, and operating the same, and receiving all its earnings and income, and holding and dispensing the same under the direction of this honorable court.

That since the filing of said bill sundry persons have come into said court, and have filed petitions, or other applications, for the allowance and payment out of the earnings of said railway of various unsecured claims and demands, as will more fully and at large appear by reference thereto and inspection of the files and records in said suit now remaining in said court, and to which reference is hereby made for greater certainty.

And your orators further show unto your honors that, on the seventeenth day of June, A. D. eighteen hundred and seventy-six, a further decretal order was entered in the said suit authorizing and directing the said receiver to make a loan for the sum of one hundred and seventy-five thousand dollars, to be used and expended for the purposes in the said order specified; and to issue receiver's certificates for the amounts and in the form and at the rate of interest in the said order prescribed, a copy of which decretal order is hereunto annexed, marked "Exhibit F," to the original whereof, of record in this court in the said suit, your orators hereby refer.

That by the terms of said order the certificates issued by the said receiver in pursuance thereof to the amount of the said sum of one hundred and seventy-five thousand dollars, were made payable out of the first earnings of the said railroad company received by the said receiver over and above the operating expenses of the said railroad, and the
23 expenses of the said receivership, and were made a valid first lien for the principal and interest thereof upon the entire property, income, and franchises of the said railroad company (including the property purchased under the said order and decree) prior to all other liens or claims thereon, excepting the said amounts due for the operating expenses of the said railroad and the expenses of said receivership.

And your orators further show unto your honors that there now remain outstanding and unpaid receiver's certificates duly issued under the said order to the amount of one hundred and sixty-six thousand dollars, together with interest thereon from the dates of their respective issues.

And it was by the said decretal order further provided that in case any proceeding for a foreclosure of the said mortgages upon said railroad should

be thereafter instituted, that forthwith, upon the commencement of such foreclosure suits, any of the said certificates issued by the said receiver under said order, which were at said time outstanding and unpaid, should forthwith become due and payable, and payment thereof might be thereupon enforced forthwith against the said railroad.

And your orators further show unto your honors that the said receiver has purchased a large amount of freight and passenger cars, locomotives, tenders, tools, and other property out of the moneys derived from the said loan, and now has the same in his possession, all of which said property is justly subject to the lien of the holders of the said receiver's certificates, and also to the lien of the holders of the said mortgage bonds so issued as aforesaid.

And your orators further show unto your honors that since the said bonds and coupons were issued as aforesaid, and since the same were delivered to your orators, respectively, as aforesaid, and during all of the time the same have been so held by your orators, as aforesaid, that the said Chicago and Pacific Railroad Company has had no agency in the city of New York where such coupons could be presented and the payment thereof demanded, and that it was therefore impossible to present said interest coupons, or any of them, at such agency in said city of New York, and make demand at such agency of the payment thereof; but, in addition to the said demand of payment of the said interest coupons made by the said amended bill of complaint heretofore filed in this court, as hereinbefore set forth, your orators, excepting the said Robert Bayard, did, on the 10th day of June, A. D. eighteen hundred and seventy-six, present all of the said coupons attached to all of the said bonds so held by them as aforesaid, which were then due and payable, to wit, all of the in-
24 terest coupons then due and unpaid, being the interest coupons for thirty-five dollars each, falling due, respectively, on the first day of April and the first day of October, in the years eighteen hundred and seventy-three, eighteen hundred and seventy-four, and eighteen hundred and seventy-five, and on the first day of April, eighteen hundred and seventy-six, on bonds numbered one hundred and sixty-one to two hundred, both inclusive, and bonds numbered three hundred and seventy-one to five hundred and forty, both inclusive, and bonds numbered six hundred and forty-one to six hundred and fifty-two, both inclusive, and bonds numbered six hundred and eighty-one to seven hundred, both inclusive, and bonds numbered seven hundred and seventy-one to eight hundred, both inclusive, and bonds numbered eight hundred and ninety-one to nine hundred and fifteen, both inclusive, and bonds numbered nine hundred and sixty-one to nine hundred and ninety, both inclusive, and bonds numbered from one thousand and one to two thousand, both inclusive, to George S. Bowen, the treasurer of the said Chicago and Pacific Railroad, at the office of the said company in the city of Chicago, and did then and there demand of the said treasurer and of the said railroad company the payment of all of the said interest coupons, and did then and there inform the said George S. Bowen, treasurer of said company, that the said demand of payment of said coupons was made in pursuance of the provision in the said bonds authorizing the holders thereof to declare the principal of said bonds to be due, in case of default for six months in the payment of the said interest coupons, after payment of the same had been demanded,

and that such coupons were presented to him for payment, and the said demand so made on him as treasurer of said railroad company, there being no agency of the said company established in said city of New York, where such demand could be made.

And your orators further show unto your honors that more than six months have expired since the said demand for the payment of the said interest coupons was made as aforesaid, and that the said railroad company, though requested as aforesaid, has not paid said interest coupons, or any part thereof, but the said railroad company have neglected and refused, and still do neglect and refuse, to pay the said coupons, or any or either of them, or any portion of the said semi-annual installments of interest evidenced by said coupons, and the same have remained in arrears during all the said six months aforesaid, and still do remain, and by reason thereof, under the terms and conditions of said bonds and mortgages or deeds of trust, your orators have the option to declare, and do hereby declare, all the bonds secured by said deeds of trust to be due and payable, anything in the said bonds or in the said deed to the contrary notwithstanding.

And your orators further show that the said defendant railroad company did not build the said entire line of railroad so as aforesaid authorized to be built by its said charter, but that its line of railroad as constructed commences at or near Chicago avenue, in the said city of Chicago, and terminates at the town of Byron, in the county of Ogle, in said State of Illinois, a distance of about ninety miles; and that the said line of road between the said points last mentioned, prior to the said decretal order of this court, so entered in the said suit hereinbefore referred to and pending in this court as aforesaid, was in the possession, use, and enjoyment of the said railroad company, and was embraced in and covered by the said two mortgages or deeds of trust hereinbefore set forth, together with the appurtenances and equipments thereof and the other properties, rights, and things by the said mortgages or deeds of trust conveyed or attempted to be conveyed to the said New York State Loan and Trust Company; and that since the said order of this court appointing the said John M. Whitman receiver the same have been and still remain in the exclusive possession and control of the said receiver, and are subject to the orders of this court in the premises.

And your orators further show, upon information and belief, that the said mortgaged premises, including the whole line of railroad, with the appurtenances and equipment thereof, are but a slender and scanty and wholly insufficient security for the amount now owing and unpaid for principal and interest upon the said outstanding mortgage bonds issued under and secured by said mortgages or deeds of trust, and that the value of the whole of the said mortgaged premises and property is less than the amount owing and unpaid upon the said mortgage bonds; that there is every ground and reason to believe, and there appears no reason to doubt, that the whole of said mortgaged premises and property will, upon a sale thereof under foreclosure, inevitably produce a much less sum than the amount owing and unpaid upon the said mortgage bonds, and leave a large unpaid deficiency owing to said bondholders; and that it is essential to the preservation of the rights and equities of said bondholders that the current net income of said mortgaged premises should be applied as far as the same

will go in reduction of the said deficiency, which must be the result of the foreclosure sale; and that it is also essential to the protection and security of said bondholders that, through a proper receivership, the said
26 railroad and other mortgaged premises should be upheld and maintained and kept in suitable repair, and kept in suitable operation.

And your orators, upon information and belief, further say that the said Chicago and Pacific Ralroad Company is now encumbered and embarrassed by a large floating and unsecured debt, amounting to several hundred thousand dollars or thereabouts, a portion of which is already in judgment, and the remainder liable at any time to be enforced by such judgment against said company, the effect whereof would be to interfere with the proper and successful operation of the said road, and to divert the income of said railroad, or a large portion thereof, from its due and proper application—first to the preservation, maintenance, and operation of said railroad, and then towards the payment of the interest and principal of the said receiver's certificates and the said mortgage bonds for which said income is primarily pledged—and to apply the same towards payment of such floating-debt creditors who may sue and recover judgment, and whose rights and equities in respect to such property and income are wholly subordinate and subsequent to these of the said mortgage bondholders; and that these embarrassments and this inequitable and unjust result can only be averted by placing and retaining the said railroad and other mortgaged property in the hands of a receiver, under the order, direction, and control of this court in that behalf until the said railroad shall have been sold under the decree of this court.

And your orators, upon their information and belief, further show that the said mortgaged premises are so circumstanced as that it would not be practicable, except at great irreparable sacrifice and loss, to sell a portion of the said mortgaged property sufficient to satisfy only the interest accrued and unpaid upon the said mortgage bonds aforesaid, leaving the residue of said premises and property to stand as security for the principal of said mortgage bonds and that no separation of said mortgaged premises for the purposes of sale could be made without very great depreciation of the property and great loss and damage to the said bondholders and to all parties interested in the said mortgaged property.

And your orators further represent that the defendants to this bill hereinafter named claim to have liens as judgment creditors, incumbrancers or otherwise, upon the premises described in and conveyed by the said mortgages or deeds of trust, namely: Mary Francis, Frederick Kaehler, Charles Kaehler, Marion Munger, William H. Bush, Fowell B. Hill, John W. Walker, John S. Hunt, William F. Hunt, Daniel L. Fleming, Anton Skow Peterson, Axel Isberg, Edward C. Lovell, executor of estate
27 of John Morse, Ezra May, Alexander Hawthorne, Anne P. Adams, Herman H. Hoffman, Seneca D. Kimbark, William H. Sisson, John Suermeier, August Muller, Horace Taber, Ambrose S. Gurnee, Daniel S. Wells, Edwin C. French, Henry L. Norton, Frank E. Walker, The Backus Oil Company, of Cleveland, Ohio, The Miama Powder Company, of Zenia, Ohio, Hiram Burchfield, Edwin Hait, George Kosier, George F. Lewis, The American Bridge Company, of Chicago, Illinois, Henry Ultes, Milton Harger, Andrew C. Hawkins, and the Chicago & Northwestern Railroad Company, of Illinois.

And your orators say that the interests of each one and all of said persons and corporations above named accrued long subsequent to the lien of the said mortgages or deeds of trust hereinbefore set forth, and are junior and subordinate thereto.

And your orators further say that there may be other persons and corporations who claim some lien or interest in and upon said premises, who are at present unknown to your orators, but whom, when discovered, your orators ask to have made parties defendant hereto. And your orators state, upon information and belief, that if there are any such claimants as last aforesaid, their interests in said premises accrued subsequent to the lien of the said mortgages or deeds of trust hereinbefore set forth. And your orators pray that if any such persons and corporations, or any of the persons and corporations hereinabove named, have any such liens or other interests in said mortgaged premises they may state and show the same in answer to this bill in order that the same may be properly disposed of by this honorable court. And your orators allege that the said Chicago and Pacific road is insolvent and unable to pay its debts in full.

In consideration of the premises, and inasmuch as your orators have no sufficient remedy in the premises save in this your honors' court of equity, where matters of this kind are properly relievable and cognizable, your orators pray that the said defendants hereinbefore named, together with the unknown owners of all the bonds issued under the said mortgages or deeds of trust and of the receiver's certificates not held and owned by your orators as aforesaid, and who shall not come in and make themselves parties complainant herein, may be made parties defendant to this suit and be required to answer all and singular the premises aforesaid, fully and particularly but not under oath, the oath of said defendants, and each of them, being hereby expressly waived, and that your orators may upon this bill have the full benefit of the said suit heretofore commenced in this court as aforesaid, and of the proceedings therein had, and may have the
28 benefit of the said order of this court made in said suit appointing said John M. Whitman receiver of said defendant railroad company.

And that the said receiver so appointed under such order as aforesaid may be continued and maintained in the said receivership until the said mortgaged premises shall be foreclosed and sold by the decree of this court; and that it may be declared and decreed that the principal of the said mortgage bonds to the amount of two million dollars, issued under the said mortgages or deeds of trust or either of them as aforesaid, has become and is due and payable;

And that an account may be taken by this honorable court, or one of the masters thereof, as to how much is due upon the said receiver's certificates so issued under the order of this court as aforesaid, which are outstanding and unpaid, and to whom the same are due and payable;

And the amount due or owing and unpaid to the said complainants and to each of them, for the payment of which the said bonds are respectively held by them as security as aforesaid, and of the amount due and owing upon the said bonds and coupons so held by the said complainants as aforesaid, and by each of them and of the amount due or owing and unpaid to the holders of such other of the said two million dollars bonds with the unpaid coupons thereunto attached, so issued under the said mortgages or

deeds of trust or either of them (and not held or owned by the said complainants or either of them), as may come in and make themselves parties to this suit; and that payment of the said respective amounts so found to be due may be decreed by the court to be made by the said defendant railroad company or by some of the said defendants, by a short day to be appointed for that purpose by this court; and that in default of such payment all and singular the said line of railroad, with its appurtenances and franchises, and rolling stock or equipment, and all other the properties, premises, rights, franchises, and things mentioned in or covered or embraced by both the aforesaid mortgages or deeds of trust, or purchased and held by said receiver as aforesaid, may be adjudged and decreed to be sold at public auction by or under the direction of this court by a master or specil com-a missioner or other officer of this court, or other suitable person or persons according to the course and practice in cases of mortgage foreclosure of such character, and that the same may be actually so sold; and that by such sale and the conveyance or conveyances to be thereupon executed, the said defendant, The Chicago and Pacific Railroad Company, and all the other defendants to this suit, and all persons claiming or to claim under it, them or any of them, subsequently to the commencement of this action,
29 as purchasers, incumbrancers, or otherwise, howsoever, may be absolutely and forever barred and foreclosed from all right, claim, title, lien or equity of redemption in, or to, or in respect of the premises, properties, rights, and franchises so sold and conveyed; and that actual possession, of said premises, properties, rights, and franchises so sole and conveyed may be decreed to be delivered to the purchaser and grantee, and that such sale may be declared to be in execution and enforcement of both the said mortgage deeds or deeds of trust heretofore set forth;

And that out of the proceeds of such foreclosure sale your orators may be paid their costs and expenses in this action; and that the residue of the proceeds of such foreclosure sale, or so much as shall be requisite for such purpose, may be paid over and applied under the direction and in pursuance of the order and decree of this court, to the payment first, of the amount so found to be due and unpaid to the holders of the said receiver's certificates, with the interest thereon, and, secondly, to or towards the payment of the amounts so adjudged to be due or owing and unpaid to the said complainants as aforesaid, and also to the amounts so adjudged to be due and unpaid to the respective holders of such of said two million dollars bonds so issued under the said mortgages or trust-deeds, or either of them, and the coupons thereto attached, which are held or owned by parties other than said complainants, who shall have become parties to this suit, as the same may be adjudged and determined by this court, and upon such conditions and in such manner as to this court may seem fit;

And that pending this suit a receiver may be appointed of all and singular the said railroad, with its appurtenances and franchises, and rolling stock or equipment, and of the income and earnings thereof, and of all other the said mortgaged premises and properties, rights, and interests, with the usual powers of receivers in such cases, and with such orders and directions in respect to such receivership and the fruits thereof as shall be equitable and proper, and that your orators may have such further or such other order, relief, and decree in the premises as may be agreeable to equity:

May it please your honors to grant unto your orators the writ of sub-

pœna issuing out of and under the seal of this court, according to the course and practice thereof, directed to the said defendants The Chicago and Pacific Railroad Company, Thomas S. Dobbins, George S. Bowen, John S. Wilcox, The New York State Loan and Trust Company, The Central Trust Company of New York, receiver of the said New York State Loan and Trust Company; John M. Whitman, receiver of the Chicago
30 and Pacific Railroad Company; Mary Francis, Frederick Kaehler, Charles Kaehler, Marion Munger, William H. Bush, Fowell B. Hill, John W. Walker, John S. Hunt, William F. Hunt, Daniel L. Fleming, Anton Skow Peterson, Axel Isberg, Edward C. Lovell, executor of estate of John Morse; Ezra May, Alexander Hawthorne, Anne P. Adams, Herman H. Hoffman, Seneca D. Kimbark, William H. Sisson, John Suermeier, August Muller, Horace Taber, Ambrose S. Gurnee, Andrew C. Hawkins, Daniel S. Wells, Edwin C. French, Henry L. Norton, Frank E. Walker, The Backus Oil Company, The Miami Powder Company, Hiram Burchfield, Edwin Hait, George Kozier, George F. Lewis, The American Bridge Company, The Chicago and Northwestern Railroad Company, Henry Ultes, and Milton Harger, therein and thereby commanding the said defendants, on a certain day and under a certain penalty therein to be inserted, to be and appear before your honors in this court, then and there to answer all and singular the premises, and to stand to, abide by, and perform such order, direction, and decree therein as to your honors shall seem meet and agreeable to equity and good conscience.

And may it please your honors to grant unto your orators the people's writ of injunction, directed to the said defendants The Chicago and Pacific Railroad Company, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, restraining them, or either of them, from any further interference with or attempt to manage or control the said railroad property and franchises, rights, and interests, until the further order of this court.

And your orators will ever pray.

JOHN I. BLAIR,
THE LACKAWANNA IRON AND COAL COMPANY,
THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
ROBERT BAYARD,
Complainants.

E. C. & W. C. LARNED,
GEO. W. SMITH,
Solicitors and of Counsel for Complainants.

31 EXHIBIT A.

This indenture, made and entered into this 1st day of October, A. D. 1872, by and between the Chicago and Pacific Railroad Company, of the first part, and the New York State Loan and Trust Company of the city of New York, of the second part, as trustees for the uses and purposes hereinafter set forth,

Witnesseth: That whereas the said party of the first part own and possess the power, under and by virtue of the laws of the State of Illinois, to locate, construct, complete, maintain, and operate a line of railroad from a line between the States of Indiana and Illinois, at a point in Cook

County, Illinois, to be hereafter selected, by the way of the city of Chicago, Illinois, to the Mississippi River, at any point at or north of the city of Savanna, to be hereafter located, all in the State of Illinois; and whereas said party of the first part stands in need of money to aid in the construction and equipment of said line, and has decided to borrow money therefor upon their bonds, and a first mortgage upon the said line of railroad, and to issue and dispose of said bonds in the sum of one thousand dollars ($1,000) each, and in number not to exceed three thousand (3,000), which shall all bear date October 1st, A. D. 1872, and shall be payable in the city of New York, on the 1st day of October, 1892, together with interest thereon at the rate of seven (7) per cent. per annum, payable semi-annually at the agency of the said first party, in the city of New York, in accordance with the coupons attached to the said bonds, which are payable on the first days of October and April in each and every year; and as security for the payment of said bonds to mortgage the corporate property and franchises of the said party of the first part, as hereinafter set forth and described; said bonds to be numbered consecutively from one (1) to three thousand (3,000) inclusive, and are to be certified and countersigned by the trustee, party of the second part, and are to be deemed equally secured by this mortgage, without preference of one over the other, and all of which are in the form following, viz:

32 UNITED STATES OF AMERICA, STATE OF ILLINOIS.

No. .] CHICAGO AND PACIFIC RAILROAD COMPANY. [$1,000 in gold.

Chartered February 16th, 1865.

First-mortgage bond.

Interest at seven per cent., payable in gold semi-annually.

Know all men by these presents, that the Chicago and Pacific Railroad Company hereby acknowledges itself to owe the New York State Loan and Trust Company, of the city of New York, or bearer, the sum of one thousand dollars in United States gold coin, at par, to be paid at the agency of the company in the city of New York, on the first day of October, A. D. 1892, with interest on the said principal from the 1st day of October, A. D., 1872, at the rate of seven per centum per annum, in gold coin, as aforesaid, at such agency, in the city of New York, on the first days of October and April, of each year, until the said principal shall be fully paid, on the presentation of the annexed coupons as they respectively become due. This bond is one of a series of three thousand, numbered from one three thousand, inclusive, and each for one thousand dollars, amounting in the aggregate to three million dollars, all of even date herewith, the full and final payment of which, and the interest thereon, promptly, is secured by a deed of trust, or first mortgage, to the said New York State Loan and Trust Company, bearing the same date as this bond, and conveying to the said trustees all the railroad of this company in the State of Illinois, situated and located between the city of Chicago and a point on the Mississippi River at or north of the city of Savanna, and all the other property, rights, and franchises in the said deed of trust.

It is hereby expressly agreed by the said railroad company, with each and every holder of this bond, that in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, then the principal of this bond shall become due in the manner provided in the said deed of trust. This bond shall pass by delivery, or by transfer on the books of the company, in the city of New York, after a registration of ownership certified hereon by the transfer agent; no transfer afterward, except on the books of the company, shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery, and it shall continue subject to successive registrations and transfers to bearer as aforesaid, at the option of the holder. This bond shall not become obligatory, unless the certificate indorsed hereon is signed by the trustees.

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In witness whereof the said Chicago and Pacific Railroad Company has caused its corporate seal to be hereto affixed, and these presents to be signed by its president and secretary, this first day of October, A. D. 1872.

[CORPORATE SEAL.] (Signed) R. M. HOUGH, *President.*
W. T. HUGHES, *Secretary.*

(Endorsed:) The undersigned trustees do hereby certify that this is one of a series of three thousand bonds, secured by a deed of trust herein referred to.

With forty coupons for the semi-annual interest to become due thereon, in the following form, to be attached thereto:

$35.] [In gold coin.

Chicago and Pacific Railroad Company will pay the bearer thirty-five dollars, in gold coin, at its agency in the city of New York, being the half-yearly interest on bond No. .

(Signed) W. T. HUGHES, *Secretary.*

Said coupons differing so as to express the time of payment of each.

Now, therefore, in order to secure the payment of the principal and interest of said bonds, and in consideration of the premises, and of one dollar paid to the party of the first part, the Chicago and Pacific Railroad Company have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm unto said New York State Loan and Trust Company, the party of the second part, their successor or successors in trust, and for the uses and trust hereby created, all and singular the railroad of the said party of the first part, as the same is now or may be hereafter surveyed, and as is now being constructed, and leading from Chicago avenue, in the city of Chicago, to the Mississippi River, at any point at or north of the city of Savanna, to be hereafter located, in the State of Illinois, a distance of about one hundred and thirty-five miles, together with all and singular the right of way for said road belonging to the party of the first part; and also the right of the said party of the first part to construct and maintain along said route a railroad, as well as all other rights, privileges, and franchises belonging to said party of the first party, in, upon, or pertaining to said railroad, including its road-bed, laid or to be laid, its stations or station-houses, depot grounds, rails, fences, bridges, and all other buildings or structures, as well as en-

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gine-houses and machine-shops, and all engines, rolling stock, and other property appertaining to said railroad, now owned or possessed or acquired, or hereafter to be owned, possessed, or acquired, and all lands and real estate to which said party of the first part may become entitled, through or by reason of the construction of said railroad; together with all and singular the rights, privileges, and corporate property and franchises of said railroad company, in and to all the above-described premises and property, together with the appurtenances thereunto belonging or in anywise appertaining:

To have and to hold the said premises, property, and appurtenances last above described, unto the said party of the second part, their successor or successors forever, in trust, nevertheless, and for the uses and purposes in this indenture expressed, that is to say: that if the interest on any of the bonds so to be issued shall not be paid by the party of the first part when the same shall become due, and if such interest remain in arrears for six months, or in any case the principal of said bonds, or any of them, shall not be paid at their maturity, then it shall be lawful for said party of the second part, their successor or successors in the said trust, upon the written request of the holders of not less than one-half part of said bonds then outstanding, to take possession of all and singular the said premises, property, and franchises so conveyed, and as attorney in fact or agent of the said party of the first part, by themselves, their agent or agents, or substitutes duly constituted, to have, use, enjoy, and to operate the same, making, from time to time, all needful repairs, alterations, and additions, and after deducting the expenses of such use, repairs, alterations, and additions, and the cost and charges of such taking possession, and a reasonable compensation for the services of the said trustees, they shall on such taking possession, and while so in possession, faithfully apply the proceeds and earnings thereof to the payment of the principal and interest of said bonds issued hereunder, remaining unpaid, and which may have become due, and upon the written request of the holders of at least one-half of said bonds issued hereunder, and then remaining outstanding if unpaid, shall cause the said premises, real and personal estate, rights, and franchises above described, to be sold at public auction, in the city of Chicago, in the State of Illinois, or in the city of New York, as the trustees may elect, giving at least twelve weeks' notice of said sale by publishing the same daily in at least one daily newspaper in the city of New York, and
35 in two daily newspapers in the city of Chicago, and on such sale to make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed in fee-simple for the same, which shall be a bar against the party of the first part, its successors and assigns, and all persons claiming, or to claim under them, of all rights, interest, or claims of, in, or to the said described premises, rights, or franchises, or any part thereof.

The amount of the bid or purchase-money of said sale—less the costs thereof—may be paid by the outstanding mortgage bonds, or any of them issued hereunder, and the same shall be taken and received in whole or in part payment and satisfaction by the party of the second part, their successor or successors, according to their value, to be ascertained and determined by the net amount arising from such sale as compared with the amount of outstanding bonds issued thereunder, as aforesaid.

And the said party of the second part, after deducting from the proceeds of the sale the costs and expenses thereof, and of managing said

property, shall apply so much of the proceeds as may be necessary to the payment of the said principal and interest due and unpaid on the residue of said outstanding mortgage bonds issued hereunder and not used, in payment of said bid as aforesaid, and shall pay over the remainder of said proceeds to the party of the first part, its successors or assigns.

And in case of any such taking possession, or proceeding to sell the mortgaged premises for default of payment of interest only, if the said party of the first part, before the said bonds shall become payable, and before such sale shall be made, shall pay and satisfy all interest then in arrear on any of said bonds, and shall also pay and discharge all costs, expenses, and disbursements, and pay all said reasonable compensation then and theretofore incurred by reason of such default, the said trustees, upon satisfactory evidence thereof, shall thereupon discontinue such proceeding, and restore possession of the mortgaged premises to the said party of the first part, to be held subject to these presents in like manner as if said default had not happened.

And the said party of the first part further covenants and agrees to execute and deliver hereafter, and from time to time, all further reasonable and necessary conveyances to more effectually carry out the intention of these presents, and particularly for the conveyance of all lands, depot grounds, right of way, and such other property, including any lands that may be granted or donated to aid the construction of said railroad, or as may be hereafter acquired by the party of the first part, between Chicago avenue and the Mississippi River, as aforesaid.

This trust, and the security hereby intended, shall extend to such
36 mortgage bonds only as shall be certified and countersigned by the said trustees; and when all said bonds shall be discharged, the trust hereby created shall cease, and upon the payment of said bonds issued hereunder, principal and interest, the estate hereby granted to the parties of the second part shall be void; and the right to the premises hereby conveyed shall revert to and revest in said party of the first part, without any acknowledgment or satisfaction, reconveyance, re-entry, or other act.

The said trustee shall certify and countersign the whole or any part of said three thousand (3,000) bonds at any time when requested so to do by the party of the first part, the same being first signed and sealed by the president and secretary, and sealed with the seal of the said party of the first part.

The said party of the first part hereby agrees to and with said parties of the second part that the amount of bonds issued hereunder shall not exceed in the aggregate the sum of three millions of dollars ($3,000,000) upon the whole of the above-described line of railroad, a distance of about one hundred and thirty-five (135) miles.

It is also especially agreed and understood that all of said bonds to be issued hereunder shall be upon an equality so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times; and none of said bonds shall be entitled to priority. And these presents and everything herein contained shall have effect and enure as security for said bonds equally and without preference, whether issued at one and the same time or at different times.

Said Chicago and Pacific Railroad Company further covenant and agree

that the money borrowed or procured for the purpose aforesaid, upon the security of said bonds, shall be faithfully applied to the building, completing, and furnishing said line of railway, and to no other purpose; and that said application shall be made with due diligence.

And the said party of the first part further covenants and agrees that out of the earnings of said road, after paying the necessary expenses of operating and maintaining the same, it will annually, on the first day of January in each and every year, including and after the year of our Lord one thousand eight hundred and seventy-seven, set apart the sum of at least three per centum of the entire amount of the bonds herein mentioned then outstanding, and deposit the same in some bank or other safe depository as a sinking fund for the final and complete security, redemption, and payment of said bonds.

It is further mutually agreed and declared that until default be made as hereinbefore stated in the payment of the said bonds, or some of
37 them, or the interest to grow due thereon at the time or times when the same shall become payable the said party of the first part shall have the right to retain, keep, and hold possession of all and singular the property and franchises above granted and mortgaged without entry or disturbance by the said trustee, under or by virtue of these presents.

It is also mutually agreed that the said party of the second part and their successor or successors in the trust hereby created shall only be accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or defaults of any agent employed by them, when such agent is selected with reasonable discretion. And that the said parties of the second part and their successors in the trust shall be entitled to receive proper compensation for all labor and service performed and for every expense, disbursement, and damage incurred by them in the discharge of their trust, in case they shall take possession of said premises or any part thereof in the proper discharge of the trust hereby created.

And in case of the incapacity or resignation of the said parties of the second part, or in case of a vacancy in the trusteeship from any cause, it shall be competent for the party of the first part, within sixty days after notice given by the owner of any of the within-mentioned bonds of such vacancy, to agree upon and appoint another party or parties to fill the vacancy so made; and in case of such appointment it shall be endorsed and made upon this mortgage or made by some proper act or instrument in writing, and shall be properly recorded in the recorder's office of each of the counties through which said railroad passes.

Upon the acceptance in writing of the trust by the newly-appointed trustee and the proper recording thereof as above, he shall be vested with all the estate, rights, and powers, and shall perform all the duties of trustee in like manner as if he had been named in this instrument as trustee.

In testimony whereof the said Chicago and Pacific Railroad Company, by order of its board of directors, has hereunto affixed its corporate seal and caused the same to be signed by its president and secretary the day and year first above written.

[CORPORATE SEAL.]

R. M. HOUGH, *President.*
W. T. HUGHES, *Secretary.*

And the said New York State Loan and Trust Company does hereby

accept the trust herein mentioned and stated, and covenants faithfully and promptly to administer and execute the same.

In testimony whereof the said New York State Loan and Trust
38 Company, by order of its board of directors, has hereunto affixed its corporate seal and caused the same to be signed by its president and secretary the 20th day of February, A. D. 1873.

[CORPORATE SEAL.] HENRY A. SMYTHE, *President.*
F. N. LAWRENCE, *Secretary.*

In presence of—
H. J. HUBBARD.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Lucius S. Pierce, a notary public in and for the county of Cook and State of Illinois, do hereby certify that Roselle M. Hough, who is personally known to me to be the president of the Chicago and Pacific Railroad Company, and William T. Hughes, who is by me personally known to be the secretary of said company, and who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, each appeared before me this day in person and acknowledged that they, in their official capacity as president and secretary of the aforesaid railroad company, signed the said instrument, caused the corporate seal of said company to affixed thereto, and delivered the same, as their free and voluntary act, for the uses and purposes therein set forth. And they do each further certify that the same is done in accordance with the provisions of the charter of said railroad company, and in conformity with the resolutions of its board of directors.

Given under my hand and official seal, at said city of Chicago, this second day of November, in the year of our Lord one thousand eight hundred and seventy-two.

[OFFICIAL SEAL.] LUCIUS S. PIERCE,
Notary Public.

EXHIBIT B.

This indenture, made and entered into this sixth day of November, in the year of our Lord one thousand eight hundred and seventy-four, by and between the Chicago and Pacific Railroad Company, a corporation created under and by virtue of a special act of the general assembly of the State of Illinois approved February 16th, A. D. 1865, party of the first part, and the New York State Loan and Trust Company, of the city of New York, party of the second part, witnesseth:

That whereas the said party of the first part has full authority under and by virtue of its said act of incorporation to locate, construct, complete, maintain, own, and operate a line of railroad from a line between the States of Indiana and Illinois, at a point in Cook County, in the State of
39 Illinois, to be hereafter selected, by the way of the city of Chicago, in the State of Illinois, to the Mississippi River, at any point at or north of the city of Savanna, to be hereafter located, all in the State of Illinois;

And whereas the said company has constructed its road from Chicago

aforesaid to the city of Elgin, in the county of Kane, in the State of Illinois, a distance of about thirty-six miles, and the same is now in daily operation;

And whereas said party of the first part is desirous of further constructing and equipping said line of railroad, and stands in need of money to aid in such further construction and equipment;

And whereas the said railway company is empowered and authorized by its charter to borrow money on the credit of the said company to an amount not exceeding its authorized capital stock, and to issue bonds for the same, and secure the payment of said bonds by mortgage or deed of trust upon the property of the company;

And whereas the said party of the first part did on the first day of October, A. D. 1872, execute a certain mortgage deed of trust to the said party of the second part to secure the bonds of said railroad company therein described, to the amount of three millions of dollars; and whereas the bonds hereinafter in this mortgage described and hereby secured, amounting to the sum of two millions of dollars, are a part of the same issue of bonds in said first-mortgage deed of trust described, and are all of the said bonds which have been issued thereunder or are now outstanding, and the said party of the first part has covenanted and agreed that no further bonds other than the said bonds to the said amount of two millions of dollars so issued as aforesaid (and being the same hereinafter described and hereby secured) shall be issued by the said party of the first part under the said first-mortgage deed of trust or under these presents;

And whereas the holders of said bonds so issued thereunder have requested the said party of the first part, as a further assurance and security for the said bonds, to execute a new mortgage deed of trust to said party of the second part, securing the said bonds to the said amount of two millions of dollars so issued and outstanding as aforesaid, which the said party of the first part hath agreed to do;

And whereas the said bonds so issued as aforesaid, and hereby secured, are each in the sum of one thousand dollars in gold, and are numbered consecutively from one to two thousand, both inclusive, and bear date October 1st, A. D. 1872, and are payable at the agency of the said party of the first part, in the city of New York, on the first day of October, A. D. 1892, with interest on the said principal from the first day of October, A. D. 1872, at the rate of seven per centum per annum in United States gold coin, payable semi-annually, at the agency of said party of the first part, in the city of New York, in accordance with the coupons attached to said bonds, which are payable upon the first days of October and April in each year, and which said bonds are certified and countersigned by the said trustee, party of the second part; and whereas such certification is conclusive evidence that said bonds are of the issue intended to be secured by these presents and by the said first-mortgage deed of trust above described, and all such bonds to the said amount of two millions of dollars are deemed and held equally secured by these presents and by the said first-mortgage deed of trust, without preference of one over the other, which said bonds are all in the form following, that is to say:

UNITED STATES OF AMERICA, STATE OF ILLINOIS.

No. .] CHICAGO AND PACIFIC RAILROAD COMPANY. [$1,000 in gold.

Chartered February 16th, 1865.

First-mortgage bond.

Interest at seven per cent., payable in gold semi-annually.

Know all men by these presents that the Chicago and Pacific Railroad Company hereby acknowledges itself to owe the New York State Loan and Trust Company, of the city of New York, or bearer, the sum of one thousand dollars in United States gold coin, at par, to be paid at the agency of the company in the city of New York, on the first day of October, A. D. 1892, with interest on the said principal from the first day of October, 1872, at the rate of seven per centum per annum, in gold coin, as aforesaid, at such agency, in the city of New York, on the first days of October and April of each year, until the said principal shall be fully paid, on the presentation of the annexed coupons as they respectively become due. This bond is one of a series of three thousand, numbered from one to three thousand, inclusive, and each for one thousand dollars, amounting in the aggregate to three millions dollars, all of even date herewith, the full and final payment of which, and the interest thereon, promptly, is secured by a deed of trust, or first mortgage, to the said New York State Loan and Trust Company, bearing the same date as this bond, and conveying
41 to the said trustees all the railroad of this company in the State of Illinois, situated and located between the city of Chicago and a point on the Mississippi River at or north of the city of Savanna, and all the other property, rights, and franchises in the said deed of trust.

It is hereby expressly agreed by the said railroad company, with each and every holder of this bond, that in case of the non-payment of any interest coupon hereto attached, if such default shall continue for six months after maturity and demand of payment, then the principal of this bond shall become due in the manner provided in the said deed of trust. This bond shall pass by delivery, or by transfer on the books of the company, in the city of New York, after a registration of ownership certified hereon by the transfer agent; no transfer afterward, except on the books of the company, shall be valid, unless the last transfer be to bearer, which shall restore transferability by delivery, and it shall continue subject to successive registrations and transfers to bearer as aforesaid, at the option of the holder. This bond shall not become obligatory, unless the certificate indorsed hereon is signed by the trustees.

In witness whereof the said Chicago and Pacific Railroad Company has caused its corporate seal to be hereto affixed, and these presents to be signed by its president and secretary, this first day of October, A. D. 1872.

[CORPORATE SEAL.] (Signed) R. M. HOUGH, *President.*
W. T. HUGHES, *Secretary.*

(Endorsed :) The undersigned trustees do hereby certify that this is one of a series of three thousand bonds, secured by a deed of trust herein referred to.

With forty coupons for the semi-annual interest to become due thereon, in the following form, to be attached thereto:

$35.] [In gold coin.

Chicago and Pacific Railroad Company will pay the bearer thirty-five dollars, in gold coin, at its agency in the city of New York, being the half-yearly interest on bond No.

(Signed) W. T. HUGHES, *Secretary.*

Said coupons differing so as to express the time of payment of each.

Now, therefore, these presents witness that in order to secure the payment of the principal and interest of said bonds, and in consideration of the premises and of one (1) dollar in hand paid by the party of the second part to the party of the first part, the receipt whereof is hereby
42 acknowledged, the said Chicago and Pacific Railroad Company have granted, bargained, sold, conveyed, and confirmed, and by these presents do grant, bargain, sell, convey, and confirm, unto the said New York State Loan and Trust Company, party of the second part, its successor or successors in trust, all the property which the said Chicago and Pacific Railroad Company now owns or may hereafter acquire, that is to say, the railway of said company as the same is now or may be hereafter surveyed, now made or in course of construction, and hereafter to be made, and leading from Chicago avenue, in said city of Chicago, to the Mississippi River, at any point at or north of the city of Savanna, to be hereafter located, in the State of Illinois, a distance of about one hundred and forty miles, including the right of way and the lands occupied thereby, and all the real and personal estate belonging to the said party of the first part, and also the superstructure and tracks upon the said right of way or lands, or to be thereon placed, and all iron and steel rails, chairs, ties, and other materials placed or used thereon, now or hereafter procured therefor, and also all stations, depot grounds, and erections thereon, fences, bridges, viaducts, and culverts, and also all engine-houses and machine-shops, with the machinery and tools therein, and all other shops held or acquired for use in connection with said railway and its business, together with all the locomotives, tenders, cars, and other rolling stock or equipments now owned or possessed or acquired by the said company, all of which things are hereby declared to be appurtenances and fixtures of the said railway, and to be included in and pass by these presents; and also all franchises connected with or relating to the construction, maintenance, or use of the said railway now held or hereafter acquired by the said party of the first part, as well as all corporate and other franchises now possessed or which may hereafter be possessed by said party of the first part, in any way relating to or connected with the said railway; and also all other property, personal or mixed, used on the line of said road in constructing or operating the same, together with all and singular the tenements, hereditaments, and appurtenances belonging to the said company or in anywise appertaining to the said line of railroad, and the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in, and to the same, and any and every part thereof, with the appurtenances:

To have and to hold the said premises, property, and appurtenances

above described, and every part thereof, unto the said party of the
43 second part, its successor or successors, forever, in trust, nevertheless, for the holders of said bonds and the uses and purposes in this indenture set forth, and upon the following trusts, conditions, covenants, and agreements:

First. Until default shall be made in the payment of the principal of the said bonds or some of them, or the interest thereon or any part thereof, as hereinafter stated, the said party of the first part shall be suffered and permitted to keep and hold possession of all and singular the property and franchises above granted and mortgaged, without entry or disturbance by the said trustee under or by virtue of these presents.

Second. In case of the non-payment of any interest coupon attached to the said bonds, and in case such default in payment shall continue for the period of six months, it shall then be lawful for the said trustee, party of the second part, on the request in writing of the holders of at least one-fourth part of the said outstanding bonds, personally or by their attorneys or agents, with or without process of law (full power and authority being hereby given for that purpose), to enter into and upon all and singular the premises hereby conveyed or intended to be, and each and every part thereof, and to have, hold, and use the same for the benefit of the holders of all of said bonds issued under these presents, to pay the interest thereon, operating the said road by themselves or by their superintendent, managers, receivers, or servants, or other attorneys or agents, and conducting the business thereof, and making from time to time all repairs and replacements, alterations, additions, and improvements as may seem to them judicious and proper for the best interest of all the parties concerned, and to collect and receive all the tolls, freights, incomes, rents, issues, and profits of the same, and from the proceeds of such receipts, after paying all the expenses and charges of operating the said railway and conducting its business, and of all said repairs, alterations, additions, and improvements, said trustee shall pay the interest due and unpaid on all of the said bonds hereby secured, in the order in which said interest became due and payable, ratably to the persons entitled thereto, and, after paying all interest on said bonds of which default was made by said railway company, and all interest which shall fall due on said bonds thereafter, so that no interest shall remain due and unpaid, then the trustee shall restore the possession of all the said property to the said railway company and its successors; and as often thereafter as said company shall make default in the payment of interest, and such default shall continue for six months as aforesaid, on such further request of said bondholders to the amount hereinbefore stated said trustee
shall take possession of all the said property and effects hereby
44 mortgaged, or intended so to be, and operate the said railway and property as hereinbefore stated, and pay the interest on default of payment as provided.

And it is further stipulated and provided, for the purpose of giving an additional and further security to insure prompt payment of the interest of the said bonds, that in case default shall be made at any time in the payment of any interest coupons on any of said bonds issued under these presents, then the holders of such bonds shall have the right, at any time after six months have elapsed after such default and demand of payment

of such interest coupons, and said default then existing, to elect and declare the principal of said bonds to be due and payable, and that then and in that case the principal of said bonds shall then be deemed due and payable to all intents and purposes the same as though the said bonds were due and payable by the terms thereof, anything contained in said bonds or herein to the contrary notwithstanding.

And that in such case, or in case default shall be made in the payment of the principal of said bonds, or any of them, issued or to be issued under these presents, when the same shall become due and payable, according to the terms thereof, at the request in writing of the holders of at least one-fourth part of the bonds then outstanding due and unpaid, the said trustee shall forthwith declare the principal of all of the said bonds hereby secured to be due, and shall foreclose this mortgage deed of trust for the principal of all of said bonds issued under these presents, and the interest thereon, and enforce payment thereof as speedily as possible.

And the said railroad company doth hereby irrevocably authorize and empower the said trustee, on such request, to make sale of all and singular the said premises and property hereby conveyed, or intended to be conveyed, at public auction, in the city of Chicago, in the State of Illinois, or in the city of New York, in the State of New York, as the trustee may elect, giving at least twelve weeks' public notice of said sale by publishing such notice daily in at least one daily newspaper of general circulation in the city of New York and in one daily newspaper of general circulation in the city of Chicago, at such place in the said city so selected, and at such time as shall be specified in said notice of sale, to the highest bidder or bidders.

And the said trustee is hereby irrevocably authorized and empowered by the said party of the first part to make such sale upon request as aforesaid, and to convey to the purchaser or purchasers, by good and sufficient conveyance, all the property so sold, which sale and conveyance shall be without redemption, and without any right or claim of the party of
45 the first part to the benefit of any valuation or appraisement laws; and said sale and conveyance shall be a perpetual bar, as well in law as in equity, to all right or claim of the said party of the first part, its successors or assigns, and all persons claiming or to claim under or from it or them, to the said property or any part thereof; and such sale and conveyance shall vest in the purchaser or purchasers, his, their, or its heirs or assigns or successors, full and absolute title in fee-simple to all the property so sold forever.

The amount of the bid or purchase-money of such sale, less the costs thereof and the expenses of managing said property, may be paid by the purchaser, in whole or in part, by the outstanding mortgage bonds issued as aforesaid, and the same shall be taken and received by the party of the second part, its successor or successors, in whole or in part payment and satisfaction of such bid or purchase-money, at their value, which shall be ascertained by comparing the net amount of such bid or purchase-money with the amount of bonds then outstanding, and the value at which each bond shall be received in payment of such bid or purchase-money shall bear the same proportion to the face value of such bond as the net amount of such bid or purchase-money bears to the whole amount of the face value of the bonds then outstanding.

Such bonds, however, are in no case to be taken at any rate above their par value.

The cash proceeds of such sale the said party of the second part, its successor or successors, are to apply to the pro rata payment of the principal and interest of all the bonds issued hereunder then outstanding due and unpaid, and not taken up in satisfaction of such bid or purchase-money as aforesaid; and should any portion of the purchase-money remain after the payment in full of all the mortgage bonds issued hereunder, with the interest thereon, and after the payment of all costs and expenses aforesaid, the said party of the second part, its successor or successors, shall pay the same to said party of the first part on demand.

And in case of any such taking possession of the mortgaged premises for default of payment of interest only, if the said party of the first part shall pay and satisfy all interest then in arrear on any or all of said bonds, and shall also pay and discharge all costs, expenses, and disbursements then and theretofore incurred by reason of such default, the said trustee, upon satisfactory evidence thereof, shall thereupon restore possession of the mortgaged premises to the said party of the first part, to be held subject to these presents in like manner as if said default had not happened.

46 Third. It is further provided, and by and on the part of the party of the first part it is agreed, that in case said trustee shall deem it advisable for the interest of the bondholders to resort to judicial proceedings to foreclose this mortgage rather than to advertise and sell as hereinbefore provided, then in that case said trustee may proceed in any court having jurisdiction of the premises to foreclose the same and the equity of redemption of the party of the first part in said property, and enforce a sale thereof by judicial process; and all provisions and agreements applicable to a sale upon advertisement as hereinbefore provided and agreed and set forth shall be equally applicable to a foreclosure or sale under judicial process.

Fourth. And the said party of the first part further covenants and agrees to execute, acknowledge, and deliver, from time to time and at all times hereafter, as often as requested by the said trustee, all further reasonable and necessary conveyances in order more effectually to carry out the intention of these presents, and particularly for the conveyance of all lands, depot grounds, right of way, and such other property, real or personal, as may be hereafter acquired by the party of the first part between Chicago avenue and the Mississippi River as aforesaid.

Fifth. It is further covenanted and agreed that said bonds shall only be valid when signed by the president and secretary of said company, and attested by the corporate seal thereof, and countersigned by said trustee, and this trust and the security hereby intended shall extend to such mortgage bonds only as shall be certified and countersigned by the said trustee; and if the said Chicago and Pacific Railroad Company shall well and truly pay the bonds under these presents required to be paid by said company, and all interest thereon, then in that case the estate, right, title, and interest of the said party of the second part, its successor or successors, in the trust hereby created, and all the equity of the bondholders in said property, shall cease and determine and become void, without any release of this mortgage deed of trust by said trustee, and the right to the premises hereby conveyed shall revert to and revest in said party of the first part, without any

acknowledgment, reconveyance, re-entry, or other act. But in such case it shall be the duty of said trustee to reconvey the said property to the party of the first part by deed of release.

Sixth. It is also expressly agreed and understood that all of said bonds to the said amount of two millions of dollars, issued under said first-mortgage deed of trust and further secured by these presents, shall be upon an equality so far as regards security for the payment thereof by said
47 first-mortgage deed of trust and by these presents, notwithstanding the same may be issued at different times, and none of said bonds shall be entitled to priority.

And said first-mortgage deed of trust and these presents, and everything therein and herein contained, shall have effect and enure as security for said bonds equally and without any preference whether issued at one and the same time or at different times, and that the money borrowed or procured upon the security of said bonds shall be faithfully applied to the building, completing, and furnishing said line of railway, and to no other purpose, and that said application shall be made with due diligence.

Seventh. And the said party of the first part further covenants and agrees that on the first day of January in each and every year, including and after the year of our Lord one thousand eight hundred and seventy-seven, it will set apart as a sinking fund for the payment of said bonds the sum of one per cent. of the entire earnings of said road, less the interest accruing on said bonds during such year (such amount, however, not to exceed in any one year the sum of fifty thousand dollars), and that it will faithfully apply the same annually to the redemption of said bonds at their par value, the particular bonds to be taken up each year to be determined annually, by lot, in such just and equitable manner as said trustee may designate.

Eighth. It is also mutually agreed that the said party of the second part, its successor or successors in the trust hereby created, shall only be accountable for reasonable diligence in the performance of said trust and the management of said property, and shall not be responsible for the acts or defaults of any agent employed by it or them, when such agent is selected with reasonable discretion; and that the said party of the second part, its successor or successors in trust, shall be entitled to receive proper compensation for all labor and service performed, and for every expense, disbursement, and damage incurred by it or them in the discharge of this trust, in case they shall take possession of said premises, or any part thereof, in the proper discharge of the trust hereby created.

Ninth. And the said Chicago and Pacific Railway Company, party of the first part, hereby covenants and agrees that the said company shall and will pay the principal and interest of said bonds to the several holders and owners thereof when and as the same shall become due and payable, according to the tenor and effect thereof, and shall and will assume and pay all taxes and assessments that may be assessed upon said mortgaged property, or any part thereof, both general and special, whether
48 State, county, town, or city, and all taxes that may be assessed upon said bonds from time to time by the Government of the United States, so that the said property mortgaged shall be free from all liens or charges for taxes or assessments of whatever kind or nature.

Tenth. And in case of the incapacity or resignation of the said party of

the second part, or in case of a vacancy in the said trusteeship from any cause, it shall be competent for the party of the first part, within sixty days after notice given by the owner or owners of any of the within-mentioned bonds, of such vacancy, to agree upon and appoint another party or parties to fill the vacancy so made, and in case of such appointment, it shall be endorsed and made upon this mortgage deed of trust, or made by some proper act or instrument in writing, and shall be duly executed under the seal of the said party of the first part, and properly recorded in the recorder's office in each of the counties of said State of Illinois through which said railroad passes, and upon the acceptance in writing of the trust by the newly appointed trustee or trustees, and the proper recording thereof as aforesaid, he, they, or it, shall be vested with all the estate, rights, and powers, and shall perform all the duties of trustee in like manner as if he, they, or it, had been named in this instrument as trustee or trustees.

In testimony whereof the said Chicago and Pacific Railroad Company, by order of its board of directors, has hereunto affixed its corporate seal, and caused the same to be signed by its president and secretary, this sixth day of November, A. D. 1874.

[CORPORATE SEAL.] THOMAS S. DOBBINS,
President.
WILLIAM T. HUGHES,
Secretary.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Walter C. Larned, a notary public in and for the county of Cook and State of Illinois, do hereby certify that Thomas S. Dobbins, who is personally known to me to be the president of the Chicago and Pacific Railroad Company, and William T. Hughes, who is by me personally known to be the secretary of said company, and who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, each appeared before me this day in person, and acknowledged that they, in their official capacity as president and secretary of the aforesaid railroad company, signed the said instrument, caused the corporate seal of said company to be affixed thereto, and for and on behalf of the said
49 company acknowledged and delivered the same as the free and voluntary act of the said company for the uses and purposes therein set forth. And they do each further certify that the same is done in accordance with the provisions of the charter of said railroad company, and in conformity with the resolutions of its board of directors.

Given under my hand and official seal, at said city of Chicago, this sixth day of November, in the year of our Lord one thousand eight hundred and seventy-four.

[OFFICIAL SEAL.] WALTER C. LARNED,
Notary Public.

EXHIBIT C.

This agreement, made and entered into by and between the Chicago and Pacific Railroad Company, a corporation created under a special act of the general assembly of the State of Illinois, approved February 16th, A. D.

1865, party of the first part, and John I. Blair, of Blairstown, in the State of New Jersey, and Moses Taylor, of the city, county, and State of New York, parties of the second part, witnesseth:

Whereas the said party of the first part did, on the first day of October, A. D. eighteen hundred and seventy-two (1872), execute a certain mortgage deed of trust to the New York State Loan and Trust Company to secure the bonds of the said party of the first part to the amount of three millions of dollars, said bonds all bearing date on the said first day of October, A. D. 1872, and being each for the sum of one thousand dollars, and numbered, respectively, from one (1) to three thousand (3000), both inclusive;

And whereas only two millions in amount of the said bonds have been issued by the said party of the first part, and are now outstanding, being the bonds numbered from one (1) to two thousand (2000), both inclusive, and the said parties of the second part are the holders, as collateral, of a large amount of the said bonds last mentioned;

And whereas the said party of the first part have executed a new mortgage as a further security and assurance for the payment of the said bonds last mentioned, which said mortgage bears date the sixth day of November, A. D. eighteen hundred and seventy-four, and it has been expressly agreed by and between the parties hereto that no bonds other than the said amount of two millions of dollars, being the said bonds numbered from one (1) to two thousand (2000), shall ever be issued under the said first-described mortgage, or under these presents, which agreement is to constitute a further and additional security for the payment of the said bonds:

Now, therefore, if the said party of the first part, for and in consideration of the premises aforesaid, and of the sum of one dollar, the receipt whereof is hereby acknowledged, do hereby covenant, promise, and agree to and with the said parties of the second part and their assigns, or the legal holders of the said bonds so issued, and numbered from one (1) to two thousand (2000), both inclusive, as aforesaid, or of any part thereof, that they, the said party of the first part, will not issue, sell, pledge, transfer, or dispose of, or authorize or permit any other person or corporation to issue, sell, pledge, transfer, or dispose of any of the said bonds in the said first mortgage hereinbefore first mentioned and described, except the said sum of two millions of dollars of bonds numbered from one (1) to two thousand (2000), both inclusive, as aforesaid, and that the said indebtedness to be secured by the said first-described mortgage, and by the said mortgage secondly herein mentioned and described, shall in no event exceed the said amount of two millions of dollars, together with the interest thereon.

In testimony whereof the said Chicago and Pacific Railroad Company, by order of its board of directors, has hereunto affixed its corporate seal and caused these presents to be signed by its president and secretary the sixth day of November, A. D. 1874.

{ SEAL CHICAGO & PACIFIC R. R. CO. } (Signed) THOMAS S. DOBBINS,
President.

(Signed) WILLIAM T. HUGHES,
Secretary.

EXHIBIT D.

In the United States circuit court for the northern district of Illinois.

To the judges of the circuit court of the United States for the northern district of Illinois, in chancery sitting:

Your orators, the Lackawanna Iron and Coal Company, a corporation created under and existing by virtue of the laws of the State of Pennsylvania, and a citizen of the State of Pennsylvania, the Delaware, Lackawanna and Western Railroad Company, a corporation created under and existing by virtue of the laws of the State of Pennsylvania, and a citizen of the State of Pennsylvania, the National City Bank, a corporation organized under the laws of the United States, doing business in the city of New York, in the State of New York, and a citizen of the State of New York, Moses Taylor, of New York City, who is a citizen of the State of New York, and John I. Blair, of Blairstown, who is a citizen of the State of New Jersey, and Robert Bayard, a citizen of the State of New Jer-
51 sey, for themselves and for all other holders of the bonds of the Chicago and Pacific Railroad Company who may come in and become parties to this suit, bring this, their original bill in the nature of a supplemental bill against the Chicago and Pacific Railroad Company, a corporation created under and existing by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, Thomas S. Dobbins, of Chicago, who is a citizen of the State of Illinois, George S. Bowen, of Elgin, who is a citizen of the State of Illinois, and John S. Wilcox, of Elgin, who is a citizen of the State of Illinois, and also against the persons hereinafter named as defendants hereto; and thereupon your orators complain and say that the Chicago and Pacific Railroad Company is a corporation existing by virtue of the laws of the State of Illinois.

That the said corporation was originally created by virtue of an act of the legislature of the State of Illinois, approved February 16, 1865, under the name of the Atlantic and Pacific Railroad Company, for the purpose of building and operating a railroad from a line between the States of Indiana and Illinois, at a point in Cook County, Illinois, to be thereafter selected, by the way of the city of Chicago, Illinois, to the Mississippi River, at any point at or north of the city of Savannah, to be thereafter located.

That the name of said corporation was afterwards, and under the provisions of the statute in such case made and provided, duly changed to the Chicago and Pacific Railroad Company.

That the said company was authorized by its said charter to borrow money not exceeding the amount of its authorized capital stock for the purpose of constructing said railroad, and to execute bonds therefor, secured by mortgage or deed of trust on all or any part of the property of the said railroad company.

That the authorized capital stock of said company under its said charter was originally two million dollars.

That the said company was authorized under its said charter to increase its capital stock to any amount not exceeding the actual estimated cost of constructing and equipping its said road.

That afterward and on the twenty-third day of December, A. D. 1871,

the capital stock of said company was increased to four million dollars, the estimated cost of the construction and equipment of the said road being two million dollars.

That said corporation, in accordance with the provisions of its said charter, did afterwards, and on the first day of October, A. D. 1872, make and execute a certain mortgage deed of trust, in and by which said deed
52 of trust the said Chicago and Pacific Railroad Company did grant and convey all its property and franchises to the New York State Loan and Trust Company, a corporation created under and existing by virtue of the laws of the State of New York, and having its residence and place of business in the city of New York, in trust to secure three thousand of the bonds of the said company, in the sum of one thousand dollars each, a copy of which mortgage deed of trust is hereunto appended and marked "Exhibit A."

That said company thereupon issued two thousand of the bonds intended to be secured by the said mortgage deed of trust, and caused the same to be countersigned by the said trustee, the New York State Loan and Trust Company, being the bonds numbered from one (1) to two thousand (2000), both inclusive, said bonds being dated the first day of October, A. D. 1872, and being each for the sum of one thousand dollars, payable in gold coin on the first day of October, A. D. 1892, with interest at the rate of seven per cent. per annum, payable semi-annually, said interest being evidenced by forty coupons attached to each of the said bonds, each of said coupons being for the sum of thirty-five dollars in gold coin, and payable on the first days of April and October of each year, principal and interest payable at the agency of the company in the city of New York, all of said bonds being duly signed by R. M. Hough, president of said company, and W. T. Hughes, secretary of said company, and countersigned by the New York State Loan and Trust Company, said bonds being payable to the New York State Loan and Trust Company or bearer, and all of said interest coupons being payable to bearer; all of which two thousand bonds, with coupons attached, being in the same form, a copy of which is hereunto appended and marked "Exhibit B."

That in and by the said mortgage deed of trust, and for the purpose of better securing the said bonds and the prompt payment of the interest thereupon, the said railroad company did, among other things, agree as follows:

"And the said party of the first part (being the said railroad company) further covenants and agrees to execute and deliver hereafter and from time to time all further reasonable and necessary conveyances, to more effectually carry out the intentions of these presents."

That it was subsequently deemed necessary and advisable, for the further security of the said two thousand bonds so issued as aforesaid, that the said railroad company should execute and deliver another mortgage or deed of trust to the said New York State Loan and Trust Com-
53 pany, securing the said two thousand bonds so issued under said first-mortgage deed of trust as aforesaid.

That accordingly the said railroad company did, on the sixth day of November, A. D. 1874, make, execute, and deliver another mortgage deed of trust, in and by which said last-mentioned deed of trust the said railroad company did convey unto the said New York State Loan and Trust

Company all its property and franchises, in trust to secure the payment of the principal and interest of the said two thousand bonds so issued as aforesaid, a copy of which said mortgage is hereunto appended and marked "Exhibit C."

That the said first-mentioned mortgage deed of trust was duly signed and acknowledged by Roselle M. Hough, the president of said railroad, and W. T. Hughes, the secretary of said company, and was duly recorded in the county of Cook, and State of Illinois, on the twenty-fifth day of February, A. D. 1873, and in the county of DuPage, in the State of Illinois, on the twenty-first day of September, A. D. 1874, and in the county of Kane, in the State of Illinois, on the twenty-sixth day of October, A. D. 1874.

That the said last-mentioned mortgage deed of trust was duly signed and acknowledged by Thomas S. Dobbins, president of said railroad company, and William T. Hughes, secretary of said railroad company, and was duly recorded in Cook County, Illinois, on the seventh day of November, A. D. 1874, in the county of DeKalb, Illinois, on the sixth day of April, A. D. 1875, in Ogle County, Illinois, on the tenth day of June, A. D. 1875, in DuPage County, Illinois, on the tenth day of August, A. D. 1875, in Kane County, Illinois, on the fourth day of January, A. D. 1875.

That the said railroad company afterwards made its agreement in writing and deposited the same with the said trustee, in and by which it was expressly agreed and stipulated by the said railroad company, that as more bonds should be issued by the said company under the said first-mentioned mortgage deed of trust than the said two thousand bonds, numbered from one (1) to two thousand (2000), so issued as aforesaid, and secured as well by the first-mentioned mortgage or deed of trust as by the said last-mentioned mortgage or deed of trust, a copy of which said agreement is hereunto attached and marked "Exhibit D."

And your orator, the Lackawanna Iron and Coal Company, represents unto your honors that it is the holder and owner of three certain promissory notes, all signed by the said Chicago and Pacific Railroad Company, all payable to the order of T. S. Dobbins, and by him endorsed,
54 said notes being described as follows: One for the sum of one hundred and eleven thousand nine hundred and thirty-one and $\frac{56}{100}$ dollars, dated Chicago, March 17th, 1875, payable in six weeks after date at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, the said note having been given by said Chicago and Pacific Railroad Company in renewal of its previou snote for the sum of one hundred and two thousand nine hundred and thirty-eight and $\frac{60}{100}$ dollars, dated Chicago, September 17th, 1874, payable six months after date at the National City Bank, New York, with interest at seven per cent. after date, which said last-mentioned note was not paid at the maturity thereof; also one for the sum of one hundred and twelve thousand and sixteen and $\frac{39}{100}$ dollars, dated Chicago, June 17th, 1875, payable in four months after date at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, said last-named promissory note having been given by said company in renewal of its previous note for the sum of one hundred and two thousand nine

hundred and thirty-eight and $\frac{60}{100}$ dollars, dated Chicago, September 17th, 1874, payable in nine months after date at the National City Bank, New York, with interest at seven per cent per annum after date, which said last-mentioned note was not paid at the maturity thereof.

Also one for the sum of one hundred and thirteen thousand eight hundred and fifteen and $\frac{77}{100}$ dollars, dated Chicago, September 17th, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, said last-mentioned promissory note having been given by said company in renewal of its previous note for the sum of one hundred and two thousand nine hundred and thirty-eight and $\frac{60}{100}$ dollars, dated Chicago, September 17th, 1874, payable in twelve months after date, at the National City Bank, New York, with interest at seven per cent. per annum after date, which last-mentioned note was not paid at the maturity thereof.

And your orator, the Lackawanna Iron and Coal Company, further represents unto your honors that the railroad company deposited with it, as collateral security to secure the payment of said indebtedness, eight hundred and eighty-two of its first mortgage bonds for the sum of one thousand dollars each, two hundred and ninety-four of said bonds having been pledged as collateral security for each of the above-described three certain promissory notes; such of the said bonds as were given to secure the said first-described promissory note for the sum of
55 one hundred and eleven thousand nine hundred and thirty-one and $\frac{56}{100}$ dollars, being the same bonds originally given to secure the note in renewal of which said note was given as above set forth, being numbered from one thousand two hundred and forty-one to one thousand five hundred and thirty-four, both inclusive; such of the said bonds as were given to secure the said promissory note secondly above-described, for the sum of one hundred and twelve thousand and sixteen and $\frac{39}{100}$ dollars, being the same bonds originally given to secure the note in renewal of which the said note was given as above set forth, being numbered from one thousand five hundred and thirty-five to one thousand eight hundred and twenty-eight, both inclusive; and such of the said bonds as were given to secure the said promissory note thirdly above-described (being the same bonds originally given to secure the note in renewal of which the said note was given as above set forth), for the sum of one hundred and thirteen thousand eight hundred and fifteen and $\frac{77}{100}$ dollars, being numbered from eighteen hundred and twenty-nine to two thousand, both inclusive, and from four hundred and forty-one to five hundred and forty, both inclusive, and from three hundred and seventy-one to three hundred and ninety-two, both inclusive.

And your orator, Moses Taylor, represents unto your honors that he is the holder and owner of five certain promissory notes, all signed by the said Chicago and Pacific Railroad Company, all payable to the order of T. S. Dobbins, and by him endorsed, said five notes being described as follows: One for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, May 15th, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest at the rate of ten per cent. per annum after maturity, which said promissory note was given by the said railroad company in re-

newal of its previous promissory note for the sum of ten thousand dollars, dated Chicago, September 15th, 1874, payable in eight months after date, at the National City Bank, New York, which said last-mentioned promissory note was not paid at the maturity thereof.

Also one for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, June twelfth, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest at the rate of ten per cent. per annum after maturity, which said promissory note was given by the said railroad company in renewal of its previous promissory note for the sum of ten thousand dollars, dated Chicago, October sixteenth, 1874, payable in eight months after date, which said last-mentioned promissory note was not paid at the maturity thereof.

56 Also one for the sum of ten thousand three hundred and thirty-three and $\frac{34}{100}$ dollars, dated Chicago, June twenty-first, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest at the rate of ten per cent. per annum after maturity, which said last-mentioned promissory note was given by said railroad company in renewal of its certain previous promissory note for the sum of ten thousand dollars, dated Chicago, October twentieth, 1874, payable in eight months after date, at the National City Bank, New York, which said last mentioned promissory note was not paid at the maturity thereof.

Also, one for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, June twenty-fourth, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest at the rate of ten per cent. per annum after maturity, which said last-mentioned promissory note was given by said railroad company in renewal of its previous promissory note for the sum of ten thousand dollars, dated Chicago, October twenty-fourth, 1874, payable in eight months after date, at the National City Bank, New York, which said last-mentioned promissory note was not paid at the maturity thereof.

Also, one for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, June twenty-fourth, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said last-mentioned promissory note was given by the said railroad company in renewal of its previous promissory note, for the sum of ten thousand dollars, dated Chicago, October twenty-fourth, 1874, payable in eight months after date, at the National City Bank, New York City, which said last-mentioned promissory note was not paid at the maturity thereof.

And your orator, Moses Taylor, further represents unto your honors that the said railroad company deposited with him as collateral security to secure the payment of said indebtedness, one hundred and fifty of its first-mortgage bonds for the sum of one thousand dollars each; thirty of said bonds having been pledged as collateral security for each of said five certain promissory notes; such of said bonds as were given to secure the said first above described promissory note for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, being the same bonds originally pledged to secure the note in renewal of which said note was given as above set forth, being numbered from one thousand and ninety-one to one

thousand one hundred and twenty, both inclusive; such of the said
57 bonds as were given to secure the said secondly above-described promissory note for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, being the same bonds originally given to secure the note in renewal of which said note was given, as above set forth, being numbered from one thousand one hundred and twenty-one to one thousand one hundred and fifty, both inclusive; such of the said bonds as were given to secure the said thirdly above-described promissory note for the sum of ten thousand three hundred and thirty-three and $\frac{34}{100}$ dollars, being the same bonds originally pledged to secure the note in renewal of which said note was given as above set forth, being numbered from one thousand one hundred and fifty-one to one thousand one hundred and eighty, both inclusive; such of the said bonds as were given to secure promissory note fourthly above described, for the sum of ten thousand three hundred and thirty-three $\frac{33}{100}$ dollars, being the same bonds originally given to secure the note in renewal of which said note was given, as above set forth, being numbered from one thousand one hundred and eighty-one to one thousand two hundred and ten, both inclusive; and such of the said bonds as were given to secure the said promissory note fifthly above described, for the sum of ten thousand three hundred and thirty-three $\frac{33}{100}$ dollars, being the same bonds originally pledged to secure the note in renewal of which said note was given, as above set forth, being numbered from twelve hundred and eleven to twelve hundred and *fifty*, both inclusive.

And your orator, the National City Bank, represents unto your honors that it is the holder and owner of four certain promissory notes, all signed by the said Chicago and Pacific Railroad Company, all payable to the order of T. S. Dobbins, and by him endorsed, said notes being described as follows:

One for the sum of ten thousand three hundred and thirty-three $\frac{33}{100}$ dollars, dated Chicago, May twelfth, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity, at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of ten thousand dollars, dated Chicago, September twelfth, 1874, payable in eight months after date, at the National City Bank, New York, which said last mentioned note was not paid at the maturity thereof.

Also, one for the sum of ten thousand three hundred and thirty-three and $\frac{34}{100}$ dollars, dated Chicago, May twelfth, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received,
with interest after maturity at the rate of ten per cent. per annum,
58 which said last named note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of ten thousand dollars, dated Chicago, September twelfth, 1874, payable in eight months after date at the National City Bank, New York, which said last-mentioned note was not paid at the maturity thereof.

Also, one for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, May twelfth, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said last described note was given by the said Chicago and Pacific Rail-

road Company in renewal of its previous note for the sum of ten thousand dollars, dated Chicago, November twelfth, 1874, payable in six months after date, at the National City Bank, New York, which said last-named note was not paid at the maturity thereof.

Also, one for the sum of ten thousand three hundred and thirty-three $\frac{33}{100}$ dollars, dated Chicago, May twenty-second, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said last-named note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of ten thousand dollars, dated Chicago, November 23d, 1874, payable in six months after date, at the National City Bank, New York, which said last-mentioned note was not paid at the maturity thereof.

And your orator, the National City Bank, further represents unto your honors that the said Chicago and Pacific Railroad Company deposited with it as collateral security, to secure the payment of said indebtedness, one hundred and twenty of its first-mortgage bonds, for the sum of one thousand dollars each, thirty of said bonds having been pledged as collateral security for each of said four certain promissory notes; such of said bonds as were pledged to secure the said first above-described note for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, being the same bonds originally pledged to secure the note, in renewal of which said note was given as above set forth, being numbered from three hundred and ninety-three to four hundred and ten, both inclusive, and from six hundred and forty-one to six hundred and fifty-two, both inclusive; such of said bonds as were pledged to secure the payment of said secondly above-described promissory note for the sum of ten thousand three hundred and thirty-three and $\frac{34}{100}$ dollars, being the same bonds originally
59 pledged to secure the note, in renewal of which said note was given as above set forth, being numbered from ten hundred and thirty-one to ten hundred and sixty, both inclusive; such of the said bonds as were pledged to secure the said thirdly above-described promissory note, for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, being the same bonds originally pledged to secure the note, in renewal of which said note was given, being numbered from one thousand and sixty-one to one thousand and ninety, both inclusive; and such of the said bonds as were given to secure the said fourthly above-described promissory note for the sum of ten thousand three hundred and thirty-three $\frac{33}{100}$ dollars, being the same bonds originally pledged to secure the note, in renewal of which said note was given as above set forth, being numbered from nine hundred and sixty-one to nine hundred and ninety, both inclusive.

And your orator, the Delaware, Lackawanna and Western Railroad Company, represents unto your honors that it is the holder and owner of three certain promissory notes, all signed by the said Chicago and Pacific Railroad Company, all payable to the order of T. S. Dobbins, and by him endorsed, said notes being described as follows:

One for the sum of ten thousand and thirteen $\frac{98}{100}$ and dollars, dated Chicago, June twenty-ninth, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company, in renewal of its

previous note for the sum of nine thousand two hundred and seven and $\frac{55}{100}$ dollars, dated Chicago, September twenty-ninth, 1874, payable in six months after date, at the National City Bank, New York, with interest at seven per cent. per annum after date, which said last-mentioned note was not paid at the maturity thereof.

Also, one for the sum of ten thousand one hundred and twenty-five $\frac{72}{100}$ dollars, dated Chicago, July twenty-ninth, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company, in renewal of its previous note for the sum of nine thousand two hundred and seven $\frac{55}{100}$ dollars, dated Chicago, September 29th. 1874, payable in nine months after date, at the National City Bank, New York, with interest at seven per cent. per annum after date, which said last-mentioned note was not paid at the maturity thereof.

60 Also, one for the sum of ten thousand one hundred and eighty-six $\frac{03}{100}$ dollars, dated Chicago, September 29th, 1875, payable in four months after date, at the Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company, in renewal of its previous note for the sum of nine thousand two hundred and seven and $\frac{55}{100}$ dollars, dated Chicago, September 29th, 1874, payable in twelve months after date at the National City Bank, New York, with interest at seven per cent. per annum after date, which said last-mentioned note was not paid at the maturity thereof.

And your orator, the Delaware, Lackawanna and Western Railroad Company, further represents unto your honors that the said Chicago and Pacific Railroad Company deposited with it, as collateral security for the payment of the indebtedness evidenced by said three notes, fifty-five of the first-mortgage bonds of its company for the sum of one thousand dollars each, such of the said bonds as were pledged to secure the payment of the said firstly above-described promissory note for the sum of ten thousand and thirteen and $\frac{98}{100}$ dollars, being the same bonds given to secure the payment of the note, in renewal of which said note was given as above set forth, being numbered from nine hundred and one to nine hundred and fifteen, both inclusive, and from six hundred and eighty-one to six hundred and eighty-three, both inclusive; such of the said bonds as were pledged to secure the payment of the said secondly above-described promissory note for the sum of ten thousand one hundred and seventy-five and $\frac{72}{100}$ dollars, being the same bonds originally pledged to secure the payment of the note, in renewal of which said note was given as above set forth, being numbered from six hundred and eighty-four to seven hundred, both inclusive, and number four hundred and eleven; such of the said bonds as were pledged to secure the payment of the said thirdly above-described promissory note for the sum of ten thousand one hundred and eighty-six and $\frac{03}{100}$ dollars, being the same bonds originally pledged to secure the payment of the note, in renewal of which said note was given as above set forth, being numbered from four hundred and twelve to four hundred and twenty, both inclusive, and from four hundred and *and* thirty-one to four hundred and forty, both inclusive.

And your orator, John I. Blair, represents unto your honors that he is

the holder of five certain promissory notes, all signed by the said Chicago and Pacific Railroad Company, four of them payable to the order of T. S. Dobbins, and by him endorsed, and one payable to the order of John I. Blair, said notes being described as follows: One for the sum
61 of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, May first, 1875, payable in four months after date to the order of T. S. Dobbins, and by him endorsed, at the Third National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum, which said note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of ten thousand dollars, dated September first, 1874, payable in eight months after date, at the National City Bank, New York, which said last-mentioned note was not paid at the maturity thereof.

Also, one for the sum of ten thousand three hundred and thirty-three and thirty-three hundredths dollars, dated Chicago, May first, 1875, payable in four months after date to the order of T. S. Dobbins, and by him endorsed, at the Third National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum; which said note was given by the said Chicago and Pacific Railroad Company, in renewal of its previous note for the sum of ten thousand dollars, dated Chicago, September first, 1874, payable in eight months after date, at the National City Bank, New York City, which said last mentioned note was not paid at the maturity thereof.

Also, one for the sum of ten thousand three hundred and thirty-three and $\frac{34}{100}$ dollars, dated Chicago, May first, 1875, payable in four months after date to the order of T. S. Dobbins, and by him endorsed, at the Third National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum; which said last-mentioned note was given by the said Chicago and Pacific Railroad Company in renewal of its previous note for the sum of ten thousand dollars, dated Chicago, September first, 1874, payable in eight months after date, at the National City Bank, New York, which said last-mentioned note was not paid at the maturity thereof. Also, one for the sum of ten thousand three hundred and thirty-three and $\frac{33}{100}$ dollars, dated Chicago, October 27th, 1875, payable in four months after date to the order of John I. Blair, at Commercial National Bank, Chicago, for value received, with interest after maturity at the rate of ten per cent. per annum.

Also, one for the sum of eleven hundred and two and $\frac{50}{100}$ dollars, dated Chicago, August thirteenth, 1875, payable in six months after date to the order of T. S. Dobbins, and by him endorsed, at the third National Bank, Chicago.

And your orator, John I. Blair, further represents unto your honors that the said Chicago and Pacific Railroad Company deposited with him, as collateral security for the payment of the indebtedness evidenced
62 by the three promissory notes, firstly, secondly, and thirdly above described, ninety of the first-mortgage bonds of said company for the sum of one thousand dollars each, being the same bonds originally pledged to secure the payment of the three notes, in renewal of which said notes were given, as above set forth; which said bonds were numbered as follows, to wit: Nos. 181 to 190, inclusive; 421 to 430, inclusive; 891 to 900, inclusive; 771 to 800, inclusive; 1001 to 1030, inclusive; and

that the said Chicago and Pacific Railroad Company deposited with him, as collateral security for the payment of the note fourthly above described, thirty of the first-mortgage bonds of said company for one thousand dollars each; said bonds being numbered from 161 to 180, both inclusive, and from 191 to 200, both inclusive.

And your orators further represent unto your honors that all of the said notes held and owned by the Lackawanna Iron and Coal Company were given for iron rails used in the construction of said road. That all of said notes held and owned by the Delaware, Lackawanna and Western Railroad Company were given for iron fastenings used in the construction of said road. That all of said notes held and owned by the National City Bank, Moses Taylor and John I. Blair, were given for money loaned to said Railroad Company, and used in the construction of said road.

And your orators further represent unto your honors that none of the interest coupons were detached from any of the said bonds so pledged to your orators as collateral security, as aforesaid, but that all of the interest coupons remained attached to said bonds, and formed a part of your orators' said security for the payment of your orators' indebtedness, as above described.

That all of the said promissory notes so given by the said Chicago and Pacific Railroad Company to your orators, as above particularly set forth, are long over due, but have not been paid, nor any part thereof; nor has any interest been paid to your orator upon any of the said promissory notes.

And your orators further show unto your honors that the said bonds, so deposited with them as collateral security, as aforesaid, have no market value, and that your orators are unable to sell the same in satisfaction of your orators' said indebtedness, and that your orators' only remedy in the premises is to enforce the collection of the said securities from the property of the Chicago and Pacific Railroad Company pledged to secure the said bonds, as by its said mortgages or deeds of trust more fully appears.

63 And your orators further aver that a very large amount of interest coupons attached to the said bonds have become due and payable during the time that your orators have so held said bonds as collateral security as aforesaid, and that your orators are entitled to receive all of said interest so falling due as aforesaid, and credit the same as a payment on your orators' said indebtedness.

That the said Chicago and Pacific Railroad Company has not paid the interest falling due upon such interest coupons, nor any of the interest coupons which have fallen due upon the said bonds since the said bonds were issued, on the first day of October, A. D. 1872.

And your orators aver that they are together the holders of thirteen hundred and twenty-seven of the said bonds, and entitled to collect the interest thereon; and that the remainder of the said two thousand bonds, that is, six hundred and seventy-three of said bonds, are outstanding in the hands of other parties than your orators.

That the said Chicago and Pacific Railroad Company did in and by its first-mortgage deed of trust, among other things, covenant and agree in the words following: "That if the interest on any of the bonds so issued shall not be paid by the party of the first part (that is the said railroad

company) when the same shall become due, and if such interest remain in arrears for six months, or in case the principal of said bonds or any of them shall not be paid at their maturity, then it shall be lawful for said party of the second part, (that is the said trustee, the New York Loan and Trust Company), their successor or successors in the trust, upon the written request of the holders of not less than one-half part of said bonds then outstanding, to take possession of all and singular the said premises, property, and franchises so conveyed, and as attorney in fact, or agent of the said party of the first part, by themselves, their agent or agents, or substitutes, duly constituted to have, use, enjoy, and operate the same, making from time to time all needful repairs, alterations, and additions, and after deducting the expenses of such use, repairs, alterations, and additions, and the cost and charges of such taking possession, and a reasonable compensation for the services of said trustees, they shall on such taking possession, and while so in possession, faithfully apply the proceeds and earnings thereof to the payment of the principal and interest of said bonds issued hereunder remaining unpaid, and which may have become due."

And your orators aver that they are the holders of more than one-half part of the bonds now outstanding under said deed of trust.

That they are unable to make a written request of the said trustee,
64 so to take possession and operate the said road under the said provision in the said mortgages or deeds of trust, or to take proceedings to foreclose and sell said property thereunder, because the said trustee, the New York State Loan and Trust Company, has been dissolved, and its corporate existence has ceased, and its effects are in the hands of a receiver, as your orators are informed and believe.

That the said dissolution of the said trustee corporation was made voluntarily, on the application of a majority of its directors, at a special term of the supreme court, in the city of New York, before Judge Donahue, on the twenty-eighth day of January, A. D. 1876, after the debts of the said corporation had been paid, and for the purpose of having a receiver appointed, under whose direction the remaining effects of said corporation might be ascertained and divided among its stockholders; and that the Central Trust Company of New York was appointed receiver of the effects of said corporation; and that the said trustee being so dissolved, and its corporate existence ended, the said trustee is therefore unable so to take possession of the said road and operate it for the payment of the interest due on your orators' said bonds as aforesaid, or to do any act or thing for the benefit and relief of your orators in the premises; and that there is now no trustee in existence, under said mortgage, who can enforce or fulfill the said trust, or any of the conditions thereof, and your orators are therefore obliged to apply unto your honors for that relief to which, under the terms and provisions of the said mortgage deed of trust, your orators are justly entitled.

And your orators allege that the said Chicago and Pacific Railroad Company is wholly insolvent and unable to meet its indebtedness; that there are judgments against the said railroad company in the courts of Cook County and of the other counties through which its said road passes, amounting in the aggregate to a very large sum, upwards of twenty-five thousand dollars, as your orators are informed and believe.

That these judgments are for the most part for small sums, but that the owners of them are levying upon the property of the said railroad company, and have upon such levies already taken possession of the office furniture of said railroad company, and of the great part of its rolling stock, and have very seriously interrupted the business of said railroad company, and it has thereby become impossible for said railroad company to run said road, or do the ordinary business thereof, whereby your orators' security is greatly deteriorated and injured, and threatens to be utterly destroyed.

That your orators allege that the greater part of the above-mentioned judgments are subsequent to and subject to your orators' lien upon the said railroad property, and, as your orators believe, all of the same are subsequent thereto, and that it is unjust and contrary to equity that your orators' said security should be damaged and become valueless by reason of the enforcement of any such subsequent liens or claims.

And your orators further allege, upon information derived from the officers of said road, that the laborers and employees upon said road have not been paid for a long space of time, upon the average at least four or five months; and that the said railroad company owes its said laborers and employees a very large sum of money—at least twenty thousand dollars, which it is unable to pay, and that in consequence many employees and laborers have left the said road, and your orators fear that some damage may be done to the said road by laborers who are unable to get their pay, and that the said railroad company cannot longer operate said road because of its inability to pay its running expenses, and to provide sufficient material and supplies to run trains over the said road regularly, whereby your orators' security has already been greatly injured, and threatens to be wholly destroyed.

And your orators allege, upon information derived from the officers and employees of said road, that the said railroad company has failed to keep their said railroad in proper repair, and that much of the track has become dangerous, and is in a condition wholly improper and incompatible with the safe running of trains, and that the said condition of the said track is becoming very rapidly worse, and unless it be repaired and properly kept up it will soon be impossible to run trains over it, and thereby your orators' security will become of no value; and that the rolling stock of the said road is not kept in proper repair, and will, unless repaired, soon become unfit for use.

And your orators aver, upon information derived from the officers of said road, that the said railroad company has a very large floating indebtedness, which it is unable to meet, the amount of which your orators do not know exactly, but are informed and believe that it amounts to at least two hundred thousand dollars, and that a considerable portion of such floating indebtedness consists of claims for liens for labor and supplies furnished said railroad company.

That by reason of the premises it is manifestly impossible for the said railroad company longer to run and operate its said road.

That your orators aver that the earnings of said road are amply sufficient, if properly applied, to pay all its running expenses and the interest upon its outstanding indebtedness, but that the said proceeds have

66 not been properly applied, as your orators are informed and verily believe, to the payment of the running expenses, but have been diverted to other purposes (which your orators are unable exactly to state, not having had access to the books and accounts of the said railroad company).

That the said Chicago and Pacific Railroad Company have made a contract with the firm of T. S. Dobbins and Company, composed of the said Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, for the construction of the said railroad, and that a large portion of the receipts of said road are, as your orators are informed and believe, now being and have heretofore been used and appropriated in payment of sums due or alleged to be due on account of the construction of such road under said contract, instead of to the payment of the amount due for the running and operating of the said railroad company.

That the said T. S. Dobbins and Company, under said contract have, as your orators are informed and believe, been in the possession and control of the said road, and have run and operated the same, and have collected and disbursed all the earnings and receipts of the said road.

And your orators aver that T. S. Dobbins, the president of said railroad company, and George S. Bowen, its treasurer, and John S. Wilcox, one of its directors, are in embarrassed circumstances, and have many judgments against them for a very large amount, upwards of two hundred thousand dollars or thereabouts, in this county and in other places, and your orators fear lest the property and proceeds of the railroad may be diverted to pay the indebtedness of the above-named Dobbins, Bowen, and Wilcox, if they are allowed to remain longer in control of the said road and of its receipts, and that your orators' security may thereby be greatly damaged.

And your orators further allege, upon information and belief, that there is a large amount of real estate, docks, wharves, depot grounds, &c., the title to which stands in the name of said T. S. Dobbins, but which is held by him in trust only for the said railroad company, and really belongs to the said railroad company, and was purchased with the money of said railroad, and for the use and benefit of said railroad company and should be applied and appropriated to the payment of the debts of the said railroad company, and forms a considerable part of your orators' said security for their said indebtedness; and your orators fear that said real estate may be wasted and misapplied by the said Dobbins, and desire that the rights of the said railroad company in the said property should be ascertained and determined, and that the said real estate should be
67 conveyed to the said railroad company, and subjected to the lien of the said mortgage deed of trust.

Forasmuch therefore as your orators are without remedy in the premises except in a court of equity, and to the end that the said Chicago and Pacific Railroad Company, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, who are made parties defendant to this bill, may be required to make full and direct answer to the same, but not under oath, their answer under oath being hereby expressly waived, and that pending this suit a receiver may be appointed of all and singular the said railroad, with its appurtenances and franchises and rolling stock now in possession or under the control of said road, or equipment, and of the income or earnings thereof, and of all other the said mortgaged premises and properties, rights and in-

terests, with orders to apply all the receipts and earnings of said railroad, as follows:

1st. To the payment of all expenses necessary to the taking possession of, running, and operating the said road, and for all necessary repairs thereon.

2d. To the payment of such valid liens for labor or materials heretofore used in the construction, equipment, or operating said road, if any, as shall be adjudged by this court to have precedence of the lien of the said mortgage securing the said bonds so held by your orators, as aforesaid.

3d. To pay any balance which may remain of said receipts and earnings to the payment of the interest due or which may become due during such receivership, upon the said bonds so held by your orators, as aforesaid, to be applied toward the payment of the said indebtedness so due to your orators, as aforesaid.

And with such other orders and directions in respect to such receivership and the fruits thereof as may be equitable and proper; and that the said Chicago and Pacific Railroad Company, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox may be enjoined from all further interference with, management, or control of the said railroad property and franchises or any part thereof, until the further order of this court; and that the said Chicago and Pacific Railroad Company may be required to deliver up to the said receiver all and singular the said mortgaged premises and properties, rights, and interests; and that the said Thomas S. Dobbins may be required to convey and grant unto the receiver of the said railroad company all real estate, docks, wharves, depot grounds, &c., held by him in trust for said company, when the rights of said railroad company in the same shall be duly ascertained and determined by this court, and
68 that your orators may have such further or such other relief and decree in the premises as may be agreeable to equity.

May it please your honors to grant unto your orators the writ of subpœna in chancery of the United States of America, directed to the Chicago and Pacific Railroad Company, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, thereby commanding them and every of them, at a certain day and under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court and then and there to answer all and singular the premises, and to stand to, perform, and abide by such order and decree therein as to your honors shall seem meet.

And may it please your honors to grant unto your orators the people's writ of injunction, directed to the said Chicago and Pacific Railroad Company, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, restraining them or either of them from any further interference with or attempt to manage or control the said railroad property and franchises, rights, and interests until the proper order of this court.

And your orators will ever pray, &c.

E. C. & W. C. LARNED,
Solicitors for Complainants.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

On this 27th day of May, A. D. 1876, before me personally appeared Walter C. Larned, the agent and attorney of the above-named complainants, and made oath that he has read the above bill, and knows the con-

tents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on his information and belief, and that as to those matters he believes it to be true; and that he makes this affidavit because the complainants are non-residents, and because he is more familiar with the facts in relation to the condition of said road than the complainants.

E. A. DRUMMOND, *U. S. Com.*

(Endorsed:) Filed May 27, 1876. Wm. H. Bradley, cl'k.

69 EXHIBIT E.

United States circuit court, northern district of Illinois.

SATURDAY, *May* 27, *A. D.* 1876.

Present: Hon. Henry W. Blodgett, district judge.

THE LACKAWANNA IRON AND COAL COMPANY, The Delaware, Lackawanna and Western Railroad Company, The National City Bank, New York, Moses Taylor, and John I. Blair,
vs.
THE CHICAGO AND PACIFIC RAILROAD COMPANY, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox. } In chancery.

And now on this day come the said complainants, by their solicitors, E. C. & W. C. Larned, and the said defendant The Chicago and Pacific Railroad Company, by its solicitor, Hon. Lyman Trumbull, and the said defendants Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, by their solicitor, said John S. Wilcox, and, upon the reading of the said bill of complaint, and the court being sufficiently advised, upon the motion of the complainants for the appointment of a receiver upon the bill filed, and the court having heard argument thereon, it is ordered and decreed by the court that John M. Whitman be appointed, upon giving security in the sum of ten thousand dollars, receiver herein, to take possession of the money and assets, real and personal, road-bed, road, iron, ties, lands, right of way, rolling stock, leases, franchises, and other rights and property whatsoever of the said Chicago and Pacific Railroad Company, wherever the same may be found (except the rolling stock described in a chattel mortgage from said railroad company to Cornelius R. Field for the use of the Haskell and Barker Car Company, dated October fifteenth, A. D. 1875, and recorded November fifteenth, A. D. 1875, in Cook County registry book, 562 of records, page 538), with power to manage, control, and exercise all the franchises whatsoever of said railroad company, and to collect, and receive all the income, earnings, and profits of said road, with power to prosecute, defend, and continue all suits brought by or against the said railroad company, whether heretofore or hereafter commenced, and whether in the name of the said railroad company or otherwise, to defend all suits brought against him as such receiver, or affecting his receivership, and to
70 bring such suits in the name of said railroad company as he may be advised by counsel to be necessary and proper in the discharge

of the duties of his office, and for acquiring, securing, and protecting the assets, franchises, property, and rights of the said railroad company.

And it is further ordered that the said defendants The Chicago and Pacific Railroad Company and the said defendants Dobbins, Bowen, and Wilcox, or whosoever may have possession thereof, assign, transfer, and deliver over to such receiver, on oath, under direction of Henry W. Bishop, a master of this court, all the property, real and personal, wheresoever found, and all contracts for the purchase of land, and all other equitable interests, things in action, and other effects which belong to or were held in trust for said defendant railroad company, or in which it held any beneficial interest, in the same condition they were at the time of the exhibiting said bill of complaint in this cause, except as far as necessarily changed in the proper management of said road, or in which it now has any such interest, and that the said defendants deliver over all books, vouchers, and other evidences relating thereto.

And it is further ordered that said receiver have full power and authority to enquire after, receive, and take possession of all such property, debts, equitable interests, things in action, and other effects, and for that purpose to examine the said defendants and the officers of said road, and such other persons as he may deem proper, on oath, before the said master, from time to time, as he may deem necessary. And it is further ordered that the said John M. Whitman is hereby directed and required, as such receiver, to keep a full and accurate account of all his acts and doings as such receiver, and to report the same to this court from time to time as he may be hereafter directed by the order of this court, and in the mean time, and until another order of this court, to run, operate, and manage the railroad of the said defendant railroad company, and to manage and control all the said property and affairs of the said defendant railroad company.

And the said receiver is hereby empowered and authorized to employ such counsel and attorneys as he may deem necessary to manage in his behalf such suits and other affairs as have arisen or may arise, and to advise such receiver in relation to the performance of his duties therein.

And it is further ordered, adjudged, and decreed that said receiver may use the moneys of the said defendant railroad company for any and all the purposes stated in the foregoing provisions.

71 EXHIBIT F.

United States circuit court, northern district of Illinois.

SATURDAY, *June* 17*th*, *A. D.* 1876.

Present: Hon. Henry W. Blodgett, district judge.

LACKAWANNA IRON AND COAL COMPANY, Moses Taylor, John I. Blair, National City Bank, Bank of New York, Delaware, Lackawanna and Western Railroad Company, and Robert Bayard	In chancery.
vs.	
THE CHICAGO AND PACIFIC RAILROAD COMPANY, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox.	

And now upon this day, upon the petition of John M. Whitman, the

receiver of the said railroad company, heretofore appointed by this court, herein praying for authority to make a loan of the amount, and for the uses and purposes in said petition set forth, and all of the said complainants and said defendants being represented by their respective counsel, and the court having heard argument thereon, and being sufficiently advised, upon said motion it is ordered and decreed by said court that the said John M. Whitman, receiver, be authorized to borrow the sum of one hundred and seventy-five thousand dollars, and to issue certificates of indebtedness for said amount on sums of one thousand dollars and upwards, payable at any time within twenty-four (24) months after the date hereof, with interest thereon at the rate of ten per cent. per annum, said certificates to be payable out of the first earnings of the said railroad company received by said receiver over and above the operating expenses of said railroad and the expenses of said receivership, and to be a valid first lien for principal and interest upon the entire property, income, and franchises of the said railroad company (including the property purchased under this order and decree), prior to all other liens or claims thereon (excepting the said amounts due for the operating expenses of said railroad and the expenses of said receivership), which certificates shall be in the form attached to the said petition; and that the said Chicago and Pacific Railroad Company and the said John M. Whitman, receiver of the said road, and his successors, be, and are hereby, ordered, adjudged, and decreed to pay the principal and interest mentioned in such certificates issued in pursuance hereof, according to the terms thereof; and in case of failure to pay the same
72 when due that any holder or holders of said certificates may institute and prosecute a suit or other proceedings in his or their name or names, on behalf of himself or themselves, and all others the holders of said certificates, to enforce the lien hereby created and compel payment thereof.

And that the said receiver be, and he is hereby, authorized to purchase such amount of rolling stock, not exceeding the sum of one hundred and two thousand two hundred and fifty dollars ($102,250), as he shall deem necessary for carrying on the business of the said road, and to make all needful contracts for said purpose, and to expend such sum, not exceeding said amount of ten thousand dollars, in the necessary repairs of the said road as he shall deem necessary to put the same in a safe and suitable condition for the business of said road, and to pay the said amounts due for back pay to the operatives and employees upon the said railroad for the three months prior to the said receivership, according to the pay-rolls showing the said indebtedness; provided that in case where such claim or claims for labor have been assigned to any person or persons other than the persons named in such pay-rolls and who performed such labor and service, and the said receiver is satisfied that the said claims so held by such assignee or assignees were purchased by such assignee or assignees thereof for less than their face amount, and for speculative purposes, that the said receiver may, in his discretion, refuse the payment of any claims for labor or service so held by such assignee or assignees thereof, and require such assignee or assignees to submit such claims for the further order of this court thereon.

And that the said receiver be authorized to pay such amounts as may be due for any portions of the right of way of said road, upon receiving from the persons to whom such amounts are paid good and sufficient con-

veyances of such right of way, and also to pay the amount due to the American Bridge Company for the construction of the said bridge over the Rock River at Byron.

And to pay the amount due to Wells, French & Co. for the construction of the said railroad bridge at Killbrick, if the said amount shall be found to be a lien upon the said road or upon said bridge.

And it is hereby further decreed that in case a further amount shall be hereafter required to meet the necessary expenses and outlays of the said receiver upon the said railroad, and a further loan should be hereafter authorized by this court to be made by said receiver for such purpose, that the certificates issued by such receiver in pursuance of such subsequent order of this court herein shall have an equality of right and lien
73 in all respects with the certificates issued under this order for said sum of one hundred and seventy-five thousand dollars; and provided further that the sum so to be loaned by said receiver, and made a first lien as aforesaid, shall not (including the sum authorized by this order) exceed the sum of two hundred and fifty thousand dollars ($250,000).

And it is hereby further ordered and decreed that in case any proceedings for a foreclosure of the mortgage upon the said railroad shall be hereafter instituted, that forthwith, upon the commencement of such foreclosure suit, any of said certificates issued by said receiver which are outstanding and unpaid at said time shall forthwith become due and payable, whether the said time of twenty-four months shall have expired or not, and payment of such certificates may be thereupon enforced forthwith against the said railroad.

(Endorsed:) Filed Jan. 15, 1877. Wm. H. Bradley, cle'k.

74 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois. In equity.

The answer of Chicago and Pacific Railroad Company, one of the defendants to the bill of complaint of John I. Blair, The Lackawanna Iron and Coal Company, The Delaware, Lackawanna and Western Railroad Company, and Robert Bayard, complainants, filed in said court against this defendant et al. January 15th, A. D. 1877.

This defendant, now and at all times hereafter saving and reserving to itself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or to so much or such parts thereof as this defendant is advised is material for it to make answer unto, it answering says:

It admits that it is a corporation existing by virtue of the laws of the State of Illinois, and it was originally created under and by virtue of the act of the legislature in said bill of complaint specified, and for the purpose therein stated.

This defendant, also admits that its corporate name has been changed from that of Atlantic and Pacific Railroad Company to that of Chicago and Pacific Railroad Company, which is its present name.

75 And this defendant, by way of answer to the allegation of said bill to the effect that this defendant was authorized by its said charter to borrow money not exceeding the amount of its authorized capital stock, &c., and to execute, negotiate, or sell bonds therefor, secured by mortgage or deed of trust on the property of this defendant, says that it is advised and believes, and so states the fact to be, that all the power conferred upon this defendant by its charter in the matter of borrowing money and in the manner of executing and disposing of bonds and securing the same by mortgage or otherwise is contained in sections twelve, thirteen, and fourteen of its said charter, which sections read as follows:

"SEC. 12. That the said railroad company by this act incorporated shall have power to borrow money on the credit of the company, not exceeding its authorized capital stock, at a rate of interest not exceeding ten per centum per annum, payable semi-annually, and may execute bonds therefor, with interest coupons thereto annexed, and secure the payment of the same by mortgage or deed of trust on the whole or any part thereof of the said railroad property and income of the company then existing or thereafter to be acquired, and may annex to said mortgage bonds the privilege of converting the same into the capital stock of the company at par, at the option of the holders, if such election be signified in writing to the company three years before the maturity of said bonds.

"SEC. 13. That the directors of said company be, and they are hereby, authorized to negotiate and sell the bonds of the said company at such times and in such places, either within or without this State, and at such rates and for such prices as in their opinion will best advance the interest of the company; and if such bonds are thus negotiated and sold at a discount below their par value, such sale shall be as valid and binding on the company in every respect as if they were sold or disposed of at their par value.

"SEC. 14. That the said company in securing the payment of said bonds by a mortgage or deed of trust on the road, property, and income of the company shall have power to execute a mortgage or deed of trust aforesaid, to receive the payment of the full amount of bonds which the company may at the time said mortgage or deed of trust bears date, or at any time thereafter, desire to sell and dispose of, and may execute and sell from time to time such amounts of said bonds, and of such dates and payable to such persons, as the directors of said company may deem desirable, till the whole amount of bonds mentioned in such mortgage or deed of trust is executed and sold, and the said mortgage or deed of trust shall be as valid and effectual to secure the payment of the bonds
76 so executed and sold, and every part thereof, as if the same and every part thereof had been executed with even date with the said mortgage or deed of trust."

And this defendant says it is advised by counsel, and believes, and so states the facts to be, that the power of borrowing money and issuing bonds therefor, and securing the same by mortgage or trust-deed, as also the power to issue bonds to be sold by the directors of this defendant, and to secure the same by mortgage or trust-deed, by said sections of said charter conferred on defendant, cannot nor ever could be exercised except in pursuance of a vote or other proper action of a majority in interest of the stockholders of whom defendant is composed.

And defendant says it is advised by counsel, and believes, and so states the fact to be, that the mode and manner of the exercise of said power of borrowing money, issuing bonds, and securing the same by mortgage or otherwise by this defendant, as well as all other railroad corporations, was determined and regulated by an act of the legislature of said State of Illinois entitled "An act to enable railroad companies to borrow money, and to mortgage their property and franchises therefor," which act was approved May 7, 1873, and was in force July 1, 1873, and hath hitherto been in force, and which said act is as follows:

BORROWING MONEY BY COMPANIES FORMED BEFORE MARCH 1, 1872.

§ 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That every railroad company organized under any law or laws of this State in force before the first day of March, A. D. 1872, is hereby empowered from time to time to borrow such sums of money as may be necessary for completing, furnishing, improving, or operating any such railroad, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted by such corporation for the purposes aforesaid; but the concurrence of the holders of two-thirds in amount of the stock of such corporation—to be expressed in the manner hereinafter provided—shall be necessary to the validity of any such mortgage; and the order or resolution for such mortgage shall be recorded as provided in this act; and the directors of such corporation shall be empowered in pursuance of any such order or resolution, to confer on any holder of any bond, for money so borrowed as aforesaid, the right to convert the
77 principal due or owing thereon into stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulation as may be provided in the by-laws of such corporation.

HOW CONCURRENCE OF STOCKHOLDERS EXPRESSED.

§ 2. The concurrence of the holders of at least two-thirds in amount of the capital stock of such corporation in the creation of any such debt and the execution of any such mortgages shall be made manifest by the votes cast by such stockholders, in person or by proxy, on the passage of appropriate orders or resolutions at a meeting of the stockholders of such corporation called by the directors thereof for such purpose.

NOTICE OF MEETING.

§ 3. The directors of such corporation shall give notice of such meeting by causing written or printed notices thereof to be either personally served upon or duly mailed (postage prepaid) to such stockholders whose names and address shall be known to said directors, such notice to be so mailed at least sixty days before the time fixed for such meeting. The said notices shall state the time and place of such meeting and the purpose thereof, as well as the amount of the proposed indebtedness. The said directors shall also cause like notices to be inserted in some newspaper published in each county through which said road shall run (if any newspaper shall be pub-

lished therein), at least sixty days prior to the day appointed for such meeting.

RESOLUTIONS, ETC., RECORDED.

§ 4. When such meeting shall be held, the resolution or order authorizing the creation of such indebtedness, and the execution of the mortgage to secure the same, together with the result of the vote thereon, shall be recorded in the office of the recorder of deeds of each county through which said road shall run, and shall also be recorded in the office of the secretary of state.

And defendant says that no part of the indebtedness in said bill of complaint mentioned was created, nor were any of said bonds executed or delivered until after said last-mentioned act was in force, nor were said bonds at any time issued and disposed of for money borrowed. And said defendant avers that said indebtedness was created, said bonds issued and deposited as collateral security therefor, and said mortgages or deeds of trust executed without the concurrence of two-thirds or a majority even of the holders of the capital stock of said corporation, of all which facts the complainants at the time of the creation of said debt and the receipt of said bonds had notice.

78 And this defendant, further answering, says it admits that by the charter of this defendant the capital stock of defendant was to consist of two million dollars, and it was in said charter provided that said capital stock might be increased to any amount not exceeding the actual estimated cost of constructing and equipping said road, but this defendant is not fully advised as to whether this defendant possesses the power, independent of further action of the legislature of said State of Illinois, to increase said capital stock, and hence this defendant neither admits nor denies the allegation of said bill of complaint in regard thereto, but leaves complainants to their proof of such allegation.

And this defendant, further answering the allegations of said bill concerning the increase of said capital stock, says it denies that on or about the 23d day of December, A. D. 1871, the capital stock of this defendant was increased to four million dollars, and this defendant denies that said capital stock was at any time increased to any amount whatever, but in regard thereto this defendant says that on or about the 23d day of December, A. D. 1871, the directors of this defendant, without the authority and direction of this defendant or the stockholders of whom defendant is composed, and without the knowledge of defendant or said stockholders, and in total disregard of the provisions of the constitution of said State of Illinois in regard to the increase of the capital stock of railroad corporations then in force, declared said capital stock to be increased to four million dollars, and defendant says that said action of said directors in thus declaring an increase of said capital stock was never in any way ratified or confirmed by this defendant, or by the stockholders composing defendant, and such action of said directors, as defendant is informed and believes, was and is wholly null and void. And this defendant further says in regard to such alleged increase of said capital stock, that afterwards, to wit, on the 2d day of February, A. D. 1875, certain of the stockholders of this defendant, at a meeting by them held for the election of officers of this

defendant, voted to increase the capital stock of defendant to four million dollars, but defendant says that the number of stockholders so voting for such increase of capital stock, as well as the number present at such meeting, was a minority of the stockholders composing defendant, both in number, individually, and in the amount of stock held and represented by them; neither was any notice given of such meeting and intended action,
79 as provided by the constitution of said State of Illinois then in force in regard to increasing capital stock of such corporations; and hence this defendant says, as it is informed and believes, such action was wholly null and void, and in law and fact no increase of the capital stock of this defendant has ever taken place, as alleged in said bill, or otherwise.

And this defendant, further answering the allegations of said bill of complaint in regard to the execution by this defendant of the alleged deed of trust in said bill of complaint described, as dated the 1st day of October, A. D. 1872, and conveying to the New York State Loan and Trust Company the railroad of this defendant, in trust, to secure certain bonds therein, and in said bill of complaint described, &c., says that it denies that this defendant ever made or executed said alleged trust deed, or attached its corporate seal thereto, nor did this defendant ever authorize the same to be made or executed, or the corporate seal of defendant to be thereto attached, nor has this defendant ever ratified or endorsed in any way the making of said alleged trust deed, and affixing the seal of defendant thereto.

And this defendant, by way of answer to said allegations to the effect that said alleged trust deed was made and executed by the president and secretary of defendant, in pursuance of a resolution of the board of directors of defendant, says that on the 3d day of September, A. D. 1872, at a meeting of said directors then held, said directors adopted a resolution which was in words and figures as follows:

"Resolved, That an issue be made by this company of three thousand first-mortgage bonds, for one thousand dollars each, payable twenty years from the 1st day of October, A. D. 1872, with interest at the rate of seven per cent. per annum, payable semi-annually; the principal and interest to be paid in United States gold coin; and said bonds, amounting in the aggregate to three millions dollars and the interest thereon, to be secured by a deed of trust on the Chicago and Pacific Railroad."

And that afterwards, on the 15th day of October, A. D. 1872, at a meeting of said directors then held, said directors adopted a resolution which was and is in words and figures as follows:

"Resolved, That the attorney of this company be, and is hereby, instructed to prepare a deed of trust to secure the payment of three thousand bonds representing three million dollars that were issued by order of the board of directors of the company at their meeting on the 3d day of September, 1872."

And this defendant says that said two resolutions are the only
80 resolutions or action of said board of directors ever passed, adopted, or taken by said board upon the subject of incumbering said railroad previous to the alleged making and executing of said alleged deed of trust, dated October 1st, 1872, in said bill described; and said resolutions embrace and confer all the authority and direction ever at-

tempted to be conferred upon or given to any person or persons for the making and execution of said alleged trust-deed, and neither said alleged trust-deed, as a whole, nor any of the details thereof, were ever submitted to or approved by said board of directors; nor was said deed adopted by said board as the deed of this defendant, either before or after its execution by said Hough and Hughes. And in regard to this matter this defendant further says that said board of directors at the time of the passage of said two resolutions had never been authorized by this defendant, or by the stockholders of whom defendant is composed, to take the action in said resolutions expressed, or in fact any action looking to the incumbering of the railroad of defendant by trust-deed or mortgage; nor has this defendant by any vote or other action of its stockholders, since the adoption of said two resolutions, ever ratified or in any way approved thereof; nor had this defendant at or previous to the time of the alleged making of said trust deed ever authorized or directed by any vote or other action of its stockholders the making of said trust-deed, or, in fact, any trust-deed or mortgage; nor has defendant by any vote or other action of its stockholders, since the making and executing of said alleged trust-deed, ratified, approved, or in any way adopted the same as the deed of this defendant. And this defendant says it is advised and believes, and states the truth to be, that as a matter of fact said alleged trust-deed, dated October 1st, A. D. 1872, is not such an instrument in its several provisions as is and was contemplated by said resolutions, and the execution thereof was unwarranted thereby. And, as a matter of law, said resolutions did not authorize or empower said R. M. Hough and W. T. Hughes to execute said deed, as the president and secretary, respectively, of this defendant, or to attach the corporate seal of defendant thereto. And, as a matter of law and fact, neither said resolutions, nor any resolution or action of said board of directors, unauthorized by a vote of the stockholders of this defendant, did, or could, confer any authority for the making of any incumbrance upon the road or property of this defendant. And, as a matter of law, said alleged trust-deed, even if authorized by defendant, and said grantee was competent to take the same, did not and could not, under the constitution and laws of the State of Illinois, convey to or vest in the grantee any interest in the rolling stock and other personal property of defend-
81 ant, and the same would remain subject to be taken and applied in satisfaction of the claims of the general creditors of defendant as fully as if no such deed had been made. And hence this defendant says that said alleged trust-deed, dated October 1st, 1872, purporting to be the deed of defendant, was and is wholly unauthorized, and the execution thereof unauthorized, and the corporate seal of defendant improperly and unlawfully attached thereto, and the same is and ought to be held to be of no binding force or effect as an incumbrance upon the road and property of defendant, either real or personal.

And this defendant, by way of answer to the allegation of said bill of complaint, to the effect that upon the execution of said trust deed aforesaid this defendant issued two thousand of the bonds in said alleged deed of trust described, and caused the same to be countersigned by the said The New York State Loan and Trust Company, &c., says it denies that it did ever issue or dispose of said alleged bonds, or authorize the same to be issued or disposed of, &c.; nor were the same issued by the board of directors

of defendant. And this defendant says that the only pretended authority, and which in fact and law is no authority, as defendant is informed and believes, for any execution of said alleged bonds by the said R. M. Hough and W. T. Hughes, is found in the two resolutions of the board of directors of defendant hereinbefore set forth, and in the further resolutions of said board, of the dates and in the words and figures as follows, to wit:

October 15th, 1872. "Resolved, That the secretary of the company be, and is hereby, directed to attach the seal of the company to one thousand of their mortgage bonds after the same have been properly executed by the president and secretary of the company, and hold said one thousand bonds for further orders of the board."

October 23d, 1872. "Resolved, That the secretary of this company be, and is hereby, directed to officially notify the New York State Loan and Trust Company, of the city of New York, that this board has delivered to T. S. Dobbins, vice-president of the Chicago and Pacific Railroad Company, one thousand of the first-mortgage bonds issued by this company on their road, and request said New York State Loan and Trust Company to sign as trustee said one thousand bonds, or any part of the same, upon application by said Dobbins to do so, and advise this company of their action."

September 1st, 1874. "Resolved, That the secretary of this company be, and is hereby, directed to attach the seal of the company to a second one thousand of the said first-mortgage bonds, after the same shall
82 have been properly executed by the president and secretary of the company, and deliver the same to the president of the company, and that he shall officially notify the New York State Loan and Trust Company, trustees, of such delivery, and request said trustees to properly endorse said bonds."

And this defendant says that there is no pretended authority for the issue and disposition of the alleged bonds in said bill of complaints described, contained in said resolutions of said board of directors, and in fact no authority or direction was ever given or attempted to be given by any resolution or other action of said board of directors to any person or persons to issue or dispose of said alleged bonds in any way or manner or for any purpose whatever. And defendant says there is not found in said resolution, or in any resolutions, or other action of said board of directors, any authority or pretended authority for the execution of any such bond in its terms and provisions as that described in said bill of complaint, and the execution of the same was wholly unauthorized by said board of directors, nor have the same ever been approved by said board of directors, or adopted as the bonds of this defendant.

And this defendant, further answering in regard to the alleged issue of said bonds by defendant, says that this defendant never authorized by any vote or other action of the stockholders of defendant, either the execution or issue of any such bonds, or in fact any bonds whatever, or authorized the resolutions of said board of directors in regard thereto, or any resolution of said board upon such subject; nor has this defendant, by any vote or action of its stockholders, ever approved, ratified, or in any way adopted the action of said board of directors, in respect to the execution or issue of said alleged bonds, nor approved, ratified, or in any way adopted said alleged bonds as the bonds of this defendant. And this defendant is

advised and believes, and so states the fact to be as a matter of law, that no authority exists, or ever existed, in the board of directors of defendant to execute and issue bonds of the kind and character of those described in said bill of complaint, and that any such action by said board of directors, unauthorized by the stockholders of this defendant, is wholly unwarranted, and of no binding force or effect as against defendant, and hence it is that this defendant says that said alleged bonds are and ought to be held to be absolutely null and void.

And this defendant, by way of answer to the allegations of said bill of complaint, to the effect that this defendant, on the 6th day of November, A. D. 1874, duly made and executed under its corporate seal a certain other deed of trust, bearing date on said day, and conveying to the
83 said New York State Loan and Trust Company the railway of this defendant, &c., as further security for said alleged bonds, says it denies that this defendant ever made or executed said last-mentioned deed of trust, or attached its corporate seal thereto, nor did this defendant ever authorize the same to be made or executed, or the corporate seal of defendant to be thereto attached; nor has this defendant ever ratified or in any way indorsed the making or execution of the same, or the affixing of the seal of defendant thereto. And this defendant, by way of answer to the allegation that said last-mentioned deed was made and executed in pursuance of a resolution of the board of directors of defendant, says that on the 6th day of November, A. D. 1874, at a meeting of said directors then held, said directors adopted a resolution, which was in words and figures as follows:

"Resolved, That whereas a portion of the holders of said two millions of bonds have requested of this company to execute a new mortgage upon the corporate property as a further assurance and security for the payment of the said bonds, that the president and secretary be authorized and directed on behalf of this company to execute a new mortgage, securing the said sum of two million of bonds, being the same bonds numbered consecutively from one to two thousand in the said former mortgage described, and to acknowledge said new mortgage as a real estate conveyance."

And this defendant says that said resolution is the only resolution or action of said board of directors passed or taken by said board upon the subject of making or executing a further security for said alleged two thousand bonds, and the resolution lastly above set forth embraces and confers all the pretended authority and direction ever attempted to be conferred upon or given to said president and secretary for the making and execution of said trust-deed, dated the 6th day of November, A. D. 1874, and neither said alleged trust-deed as a whole, nor any of the details thereof, were ever submitted to or approved by said board of directors, nor was the same adopted by said board of directors as the deed of this defendant, either before or after the alleged execution thereof by said president and secretary, nor was the delivery thereof ever authorized or directed by either this defendant or by said board of directors; nor was there any consideration of any kind or nature ever received by said board of directors or by defendant for either the alleged execution or delivery of said alleged trust-deed, and the same was wholly without consideration therefor. And in regard to this matter, this defendant further says that said board of directors, at the time of the passage of the resolution lastly

above set forth, had never been authorized by this defendant or by
84 the stockholders of whom defendant is composed, to take the action in said resolution expressed, or in fact any action looking to the incumbering of the railroad or property of defendant by said alleged trust-deed lastly above mentioned, or in any other way or manner; nor has this defendant by any vote or other action of its stockholders, since the adoption of said resolution lastly above set forth, ever ratified or in any way approved thereof, nor had this defendant at or previous to the time of the alleged making of said trust-deed, dated November 6th, A. D. 1874, ever authorized or directed by any vote or other action of its stockholders, the making of said last-mentioned trust-deed, or in fact any trust-deed or mortgage whatever; nor has defendant, by any vote or other action of its stockholders since the alleged making and execution of said last-mentioned trust-deed, ratified, approved, or in any way adopted the same as the deed of this defendant.

And this defendant says it is advised and believes, and states the truth to be, that as a matter of fact said trust-deed dated November 6th, A. D. 1874 is not such an instrument in its character and in its several provisions as is and was contemplated by said resolution lastly above set forth, and both the execution and delivery thereof was unwarranted thereby; and as a matter of law said last-mentioned resolution, or in fact any resolution or action of said board of directors, unauthorized by a vote of the stockholders of this defendant, did not and could not confer any authority for the making of said last-mentioned alleged trust-deed, or any incumbrance upon the road and property of this defendant. And as a matter of law said alleged trust-deed, even if authorized by defendant, and said grantee was competent to take title under the same, did not and could not, under the constitution and laws of the State of Illinois, convey to or vest in the grantee therein named any interest in the rolling stock and other personal property of defendant, and the same would remain subject to be taken and applied to the satisfaction of the claims of the general creditors of defendant as fully as though no such deed had been made. And defendant says that said alleged trust-deed, dated November 6th, A. D. 1874, was and is wholly unauthorized, and the execution thereof was unauthorized, and the corporate seal of defendant improperly and unlawfully attached thereto, and the same is, and ought to be, held to be of no binding force or effect as an incumbrance upon the road and property of defendant, either real or personal.

And defendant says that at the time of the alleged execution of the several alleged notes in said bill of complaint by complainants, respectively,
claimed to be held by them, and at the time the complainants ac-
85 quired the several alleged original notes, in renewal of which it is claimed the alleged notes by them now respectively claimed to be held were given, and at the time of the reception by the complainants severally of the pretended bonds by them respectively claimed to be held as collateral security for the payment of such notes, complainants, and each of them, were fully aware of all the then existing facts as herein set forth in regard to the unauthorized execution of said trust deeds, and each of them, and of said alleged bonds, and the want of validity respectively to the same, and that they and each of them in law had and possessed no binding force or effect upon defendant or its railroad or property.

And this defendant, by way of answer to the allegation of said bill of complaint, to the effect that this defendant on the said 6th day of November, A. D. 1874, made its agreement in writing, thereby stipulating that no more bonds should be issued by this defendant under said alleged first-mentioned deed of trust than said alleged two thousand bonds, numbered from one to two thousand, says it denies that this defendant ever made or executed any such agreement, or any agreement upon that subject; nor did this defendant ever authorize the same to be made or executed; nor has defendant by any vote or other action of its stockholders, or in any way or manner, ever ratified, endorsed, or approved the making or execution of the same. And this defendant says, by way of answer to the allegation of said bill, to the effect that said agreement was made in pursuance of a resolution of the board of directors of defendant, says that if said board of directors ever passed any resolution, thereby attempting to authorize any such agreement to be made, such resolution was and is wholly ineffectual for such purpose, for, as defendant is advised, said board of directors does not possess, and never possessed, any power to authorize such an agreement to be made, and said board could not by any action by it taken in the premises authorize or empower the president and secretary of this defendant to make or execute said alleged agreement, or to affix the corporate seal of defendant thereto, without said board of directors was itself first empowered so to do by this defendant by a vote or other action of the stockholders of whom defendant is composed.

And defendant says that said board of directors have never been authorized by this defendant, or by any vote or other action of the stockholders of defendant, to pass any resolution or take any action contemplating or pertaining to the making or execution of any such contract in regard to limiting the issue of said alleged bonds; nor has this defendant, by any vote or action of its stockholders, or otherwise, ever ratified or confirmed any action, if any there has been, of said board of di-
86 rectors in regard to such agreement. And this defendant insists that said alleged agreement, if any such there be, was and is wholly unauthorized by defendant, and was and is of no binding force and effect upon defendant, and ought to be held to be null and void.

And this defendant, by way of answer to the several separate allegations of the complainants, respectively, to the effect that they are respectively the owners and holders of certain promissory notes by them, respectively, alleged to be signed by this defendant, &c., says that it was not aware till made so by the filing of complainants' said bill for the appointment of a receiver for defendant, that said complainants respectively claimed to be the owners and holders of any such notes as they in their several separate allegations describe and allege to have been made by defendant.

And defendant says that if said complainants, or either of them, have any notes purporting to be the notes of this defendant, of the kind and character by them severally described in said bill of complaint, the same were not, nor were either of them, executed by the authority, knowledge, or consent of defendant, and defendant has never ratified or adopted in any way or manner such alleged notes, or either of them, as the notes of this defendant. And defendant says that the alleged notes, if any such there were, in renewal of which it is by complainants severally alleged

the notes by them respectively now claimed to be held were given, were not, nor were either of them ever executed with the knowledge, authority, or consent of defendant; nor were they, or either of them, ever approved or adopted as the notes of defendant, nor had this defendant, previous to the filing of said bill, any knowledge that any such pretended notes were or had ever been executed or issued.

And defendant says that not only did it not authorize the making of any of said alleged notes, by complainants severally described in said bill, but defendant is advised by counsel, and believes as a matter of law, neither this defendant nor its board of directors, or any executive officer of defendant, possess, or ever possessed, the power to authorize the making, or to make any such alleged notes, or for the purposes for which it is alleged the same were given. And this defendant says that said complainants, each and all of them, at the time they became the owners and holders of the alleged notes by them severally claimed to be by them separately held, if any such alleged notes they or either of them, have, and at the time they became the owners of the alleged original notes, in renewal of which it is by them claimed the alleged notes by them now claimed to be held were given, were fully cognizant
87 of the fact that said alleged notes, and each of them, were executed by Thomas S. Dobbins, assuming to act on behalf of this defendant, and that said Dobbins had no authority to execute the same as the notes of this defendant, and that defendant had never ratified or adopted said act or notes, or either of them.

And defendant says it denies that all or any of said alleged notes claimed to be held and owned by the said Lackawanna Iron and Coal Company were given for iron rails used in the construction of defendant's said railroad, and denies that all or any of said alleged notes claimed to be held and owned by the Delaware, Lackawanna and Western Railroad Company were given for iron fastenings used in the construction of said road.

And defendant says that it is not aware what, if any, consideration was ever received by this defendant for said alleged notes, in renewal of which it is claimed by said Lackawanna Iron and Coal Company that the notes by it now claimed to be held were given; nor is defendant aware what, if any, consideration was ever received by defendant for said alleged notes in renewal of which it is claimed by said Delaware, Lackawanna and Western Railroad Company that the notes by it now claimed to be held were given, but defendant says it is now informed by said T. S. Dobbins that he procured upon said alleged notes certain amounts of iron rails and iron fastenings of said Lackawanna Iron and Coal Company and from said Oxford Iron Company, which were used in the construction of defendant's said railroad, but defendant believes that the value of said rails and iron fastenings was not near as great as the amount represented by said notes, and hence this defendant says that if said original notes, though executed without authority as aforesaid, are to be held to be equitably binding on this defendant, by reason of the use of said iron in the construction of said road, yet this defendant says that it ought not to be charged above the actual value of said iron by reason thereof.

And defendant says it is not aware what was in fact the consideration, if any there was, for the said several promissory notes by complainants Blair and Bayard respectively claimed to be made by defendant, or whether, as a matter of fact, any part or portion of the consideration, if any there

was, for the same respectively, was received or used for the benefit of this defendant, or in the construction of its said railroad, and hence this defendant neither admits nor denies the allegation of said bill of complaint in respect to the consideration of said notes by said Blair and Bayard claimed to be held, or the use that was made of the alleged consideration for same, but calls for strict proof of all such allegations.

88 And this defendant, by way of answer to the several separate allegations of complainants, respectively, to the effect that this defendant deposited with them separately as collateral security to secure the payment of said alleged indebtedness of defendant to said complainants, respectively, certain of the alleged bonds by complainants in their said bill alleged to have been made by defendant; that is to say that defendant deposited with said Lackawanna Iron and Coal Company eight hundred and eighty-two bonds to secure the payment of the three alleged notes by it claimed to be held and deposited with said Delaware, Lackawanna and Western Railroad Company, fifty-five bonds to secure the payment of the three alleged notes by it claimed to be held and deposited with said John I. Blair, one hundred and twenty bonds to secure the payment of the four alleged notes by him claimed to be held and deposited with said Robert Bayard, two hundred of said bonds to secure the payment of the two alleged notes by him claimed to be held, answering, says it denies that it ever made any such deposit or pledge of said alleged bonds, or in fact any deposit or pledge of bonds with said respective complainants, or with either of them, for the purpose by them severally in said bill alleged, or for any other purpose whatever; and this defendant denies that it ever authorized any person or persons to make any such deposit or pledge, or in fact any deposit of such alleged bonds as security for the payment of the alleged notes in said bill described, or any or either of them, or for any other purpose whatever; and defendant says that the board of directors of defendant never made any such deposit of said alleged bonds, or authorized by any resolution or other action of said board any person or persons to make any such deposit or pledge of any of said alleged bonds, or any deposit or pledge of the same for any purpose whatever. And this defendant says that even were said alleged bonds the bonds of this defendant duly executed or authorized by it, which this defendant has herein denied, yet as defendant is advised by counsel and believes, and so states the fact to be, neither this defendant as a corporation nor the board of directors of defendant as such, nor any executive officer of this defendant has, or has ever had, any power or authority to deposit or pledge said bonds as collateral security for the payment of said alleged notes, or either of them, or for any indebtedness of this defendant whatever, and any such disposition of bonds of defendant by the order of itself, or by its board of directors, or by any officer of defendant, would be not only a fraud upon the creditors of defendant generally, and a total disregard of the rights of the stockholders of de-

89 fendant, but would be an act wholly unauthorized by the charter of defendant and in violation thereof, and in violation of the constitution of said State of Illinois in force at the time of the alleged issue and deposit of said bonds with complainants, and any such disposition of bonds of defendant would be wholly null and void, so far as charging defendant thereby or conveying to the pledgee thereof any interest in such bonds.

And defendant says, as before stated, that the only power or authority possessed by defendant or the board of directors of defendant in relation to bonds or the issue thereof is found in sections twelve, thirteen, and fourteen of the said charter of defendant, and in said act hereinbefore set forth, and defendant has been advised by counsel and believes the fact to be that no bonds can be made and issued by defendant or made obligatory upon defendant except the stockholders of defendant, by vote or other proper action, first determine to make and issue such bonds, and then even this defendant would have no power to execute or issue bonds except for money borrowed by defendant, and only to the extent of the money borrowed, and except for the further purpose of sale in the market under the care and direction of the board of directors of defendant. And defendant says that none of said alleged bonds held by complainants, or either of them, nor was any part of said alleged two thousand bonds ever executed or issued for money borrowed, nor were the same or any part thereof ever sold in any way or manner, in any place whatever, nor were said alleged two thousand bonds, or any of them, ever issued for money, labor, or property received or applied to the purpose for which this defendant was created, as provided and required by the constitution of said State of Illinois in force at the date of the alleged issue of said bonds.

And defendant says, as before herein stated, no vote or other action of the stockholders of defendant was ever had or taken authorizing the making or issue of any bonds of defendant, nor has defendant ever in any way ratified or approved of any action of its board of directors in regard thereto, nor has defendant in any way approved of or adopted any act, if any there has been, of any person or persons connected with this defendant, whereby he or they have executed and pledged any bonds purporting to be the bonds of this defendant as collateral security for the payment of the alleged indebtedness of defendant to complainants respectively, or for any other purpose.

And this defendant says that complainants, each and all, at the time they received said alleged bonds for the purposes by them in their said bill respectively stated, were fully cognizant of the fact that no such bonds had been executed or ordered to be issued by defendant, and of the total want of power on the part of defendant or in any officer of defendant to make any pledge or other disposition of any bonds of defendant, except under the circumstances and for the purposes in said sections of said charter specified, and under the limitations of the constitution of said State of Illinois at the time in force.

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And this defendant, answering the allegations of complainant Robert Bayard to the effect that he is the owner and holder of four promissory notes dated March 1st, A. D. 1876, for the sum of $30,000.00 each, made by Thomas S. Dobbins, &c., says this defendant has no knowledge in regard thereto, and hence neither admits nor denies such allegations, but leaves said complainant to his proof thereof. But this defendant denies that said notes, if any such said Bayard holds, were given in renewal of notes given in consideration of moneys advanced by said State Savings Institution for the account of this defendant; and this defendant denies that any of the alleged bonds of defendant, as in said bill is stated by said Bayard, were pledged by said Dobbins as security for the payment of said four last-mentioned notes, or that said Bayard now holds any of said alleged bonds as such security; and defendant says that if said Bayard does

in fact hold as security for said last-mentioned notes any bonds purporting to be the bonds of defendant, the same, as before stated, have never been made or executed by defendant or by the authority of defendant, nor were they ever approved or adopted by defendant or issued by defendant, and neither said Dobbins or other person or persons had any right or authority either to make and execute or pledge said alleged bonds, for the reasons hereinbefore stated, and said Bayard could not and did not acquire any claim against this defendant by reason of any alleged pledge of said alleged bonds by said Dobbins or otherwise.

And defendant, further answering the allegations of said Bayard to the effect that no part of said two alleged notes by him in said bill first described had been paid, except that he (said Bayard) realized from the sale of bonds conveyed in trust to secure said notes the sum of $15,000, says it is informed the fact is that said Thomas S. Dobbins, being interested in the procurement of the money by said Bayard, now pretended to have been loaned to defendant, as the consideration of said alleged three notes, conveyed to said Bayard or to George W. Smith and William Bayard Cutting, as trustees, certain lands situated in Cook County, Illinois, the title to which then stood in said Dobbins, to secure the payment of said notes, which were in fact made by said Dobbins and not authorized by this defendant, and which lands, at the time of such conveyance and at the
91 time of the sale of the same, upon which it is alleged the said sum of $15,000 only was received, were worth in fact the sum of $200,000, and ought and would if fairly and lawfully sold by said trustees, with a view to the protection of the interest of all parties interested therein, have sold for the sum of $100,000.

And defendant, further answering the allegation of said Bayard to the effect that on the 1st day of June, A. D. 1876, he caused to be presented to this defendant, at its office in the city of Chicago, the said four hundred alleged bonds by him claimed to be held as aforesaid, and demanded payment of so many of the coupons thereto attached as were then by the terms of the same due and payable, and that payment of the same was then and there refused, says it denies that any such presentment or demand was ever made.

And defendant, by way of answer to the allegation of complainants' bill to the effect that the coupons attached to said alleged bonds formed part of complainants' security respectively, says that the same answer by defendant herein made to the charge that complainants hold the alleged bonds of defendant as security is applicable to the claim of claimants to the said coupons, and defendant makes its answer hereinbefore given its answer to such claim without repetition thereof.

And defendant admits that it has not paid said alleged promissory notes now claimed to be held by complainants respectively, or any of them or any part thereof, nor the interest thereon, nor has this defendant paid any interest on said alleged coupons, and that such neglect to pay the same has been for the reasons hereinbefore and hereinafter stated.

And defendant, by way of answers to the allegations of said bill of complaint to the effect that said alleged bonds have no market value and that complainants are unable to sell the same, &c., says that it may be true that the alleged bonds claimed by complainants to be held by them respectively, as in their bill is set forth, have no market value, and that complainants

are unable to sell them, and which statement defendant neither admits nor denies, but leaves complainants to their proof thereof; but defendant does say that said alleged two thousand bonds in said bill described had the same and the alleged trust-deeds purporting to secure the same been authorized by and been obligatory upon defendant would have had a market value, and could have been sold in the market for a large sum, to wit, at least ninety per cent. of the face value of said bonds, and such bonds would have been actually worth their full face value, as the railroad of defendant cost and is worth fully two and one-half millions of dollars.

92 And defendant, further answering, admits that it has never paid any interest on any of said alleged bonds for two millions of dollars; and defendant denies that it has ever been under any obligation to pay any interest thereon; and this defendant denies that said complainants, or either of them, are entitled to collect and receive interest thereon or on any part thereof; and defendant denies that complainants, or either of them, ever demanded the payment of interest thereon by defendant as alleged in said bill of complaint.

And this defendant, further answering, says it admits all the allegations of said bill of complaint concerning the incapacity of said New York State Loan and Trust Company to take, receive, or hold title to the real estate or franchises of defendant, or to take, use, and operate said railroad, &c., and that said New York State Loan and Trust Company has not now nor ever had any interest in the railroad or other property of defendant.

And defendant admits that said two alleged trust-deeds are, as to said New York State Loan and Trust Company, utterly and entirely void and of no effect, and not only so, but defendant insists that for the reasons hereinbefore stated said two alleged trust-deeds are utterly and entirely void and of no effect as to any person or persons whomsoever; and defendant denies that, as to complainants or any other person or persons, said alleged trust-deeds are to be construed and held to be in the nature of covenants to stand seized, subject to the uses therein declared, as declarations of trust to the use of the holders of said alleged bonds, but, on the contrary, they should be held to be absolutely null and void for any and all purposes.

And defendant, by way of answer to the allegation of said bill of complaint to the effect that there is a large amount of real estate, docks, wharves, depot grounds, &c., the title to which is in the name of said T. S. Dobbins, or in the name of T. S. Dobbins & Company, or of some of the members of said firm, and by him or them held in trust for this defendant, and which really belongs to defendant, &c., says it is informed and believes that the title to certain real estate, &c., used by defendant for the purposes of said railroad is in said Dobbins, but defendant is not aware that the same was purchased with money belonging to defendant, nor that the same belongs to defendant, but, on the contrary, defendant believes that the title to all property of right belonging to defendant, or purchased with the money of defendant, is in defendant, and that the property by complainants referred to as being held by said Dobbins was never bought by this defendant, or with the means of defendant, but by said Dobbins, and with his means or that of said Dobbins & Company, though the same, or some part thereof necessary for the use of defendant, may have been

93 purchased by said Dobbins for the use of defendant, and by him intended to be conveyed to defendant should it ever become able to

pay therefor, which defendant is informed said Dobbins is willing to do. And hence defendant says it is not aware that there is any equity in favor of complainants or any creditors of defendant attaching to said real estate, &c., by reason of any rights of defendant therein or thereto, and defendant neither admits nor denies the allegations of said bill in regard thereto, but leaves complainants to their proof thereof.

And defendant, further answering, says it admits the allegation of said bill relative to the filing of said bill for the appointment of a receiver for this defendant, and the filing of an amendment thereto, and the appointment of said John M. Whitman as such receiver, &c.

And defendant says that the appointment of said receiver was made in the discretion of said court, upon the allegation of said bill of complaint filed for that purpose; that no answer of defendant to said application had at the time of such appointment been made thereto, nor did defendant in any way consent to such appointment, or to any of the acts of said receiver thereunder, nor to the order of said court directing the loan by said receiver of $175,000, or to any of the orders of said court made during said receivership in relation to the management or disposition of the property of defendant. And defendant says it is informed and believes, and charges the fact to be, that all the moneys procured by said receiver under said order authorizing the borrowing of said sum of $175,000 was advanced by the said complainants or some of them, and inasmuch as the actual facts of the case, as disclosed herein, show that the appointment of a receiver for defendant was wholly unnecessary and improperly applied for by complainants, as they themselves were fully aware at the time of such application, no equities ought to attach to the property of defendant by means of such order and advancement superior to those of other persons who have become creditors of defendant by reason of the advancement of money, labor, and material towards the construction of said railroad.

And defendant, answering the allegations of said bill to the effect that on the 10th day of June, A. D. 1876, complainants, with the exception of said Bayard, presented all of the coupons attached to said alleged bonds claimed to be held by said complainants, which by the terms thereof were then due and unpaid, as claimed by complainants, to the treasurer of defendant at defendant's office in Chicago, and did there and then demand of such treasurer and of this defendant the payment of all of said alleged interest
94 coupons, &c., says that no such presentation or demand was ever made, either to and upon said treasurer or to and upon this defendant.

And defendant says that if any such demand had been made, either by said Bayard, as claimed by him, or by the other complainants, as claimed by them, and the same had been refused, as alleged in said bill, such refusal would have been proper and just in view of the facts hereinbefore stated, and the utter absence of any valid claim on the part of said complainants or either of them, either in law or equity, to receive such payment from defendant.

And defendant denies that complainants, in connection with said alleged demands for the payment of said interest coupons, or at any other time, informed said treasurer of defendant that said alleged demand of payment of said coupons was made in pursuance of the provisions in said alleged bonds authorizing the holders thereof to declare the principal thereof

to be due in case of default for six months in the payment of interest coupons after the same had been demanded, &c., as stated in said bill of complaint.

And defendant, for the reasons hereinbefore stated, denies that any election or declaration on the part of complainants in regard to said alleged bonds can in any way affect the liability of defendant, or create any right in complainants as against defendant, or the railroad or property of defendant, or that any such election or declaration could in fact make said alleged bonds due and payable, or entitle the complainants to take any steps to foreclose said alleged trust-deeds.

And defendant, further answering, says it admits that it has not yet completed its entire line of railroad by said charter authorized to be built, but the same has been completed as alleged in said bill of complaint; but defendant denies that said line of road, or the appurtenances or equipments, or any part thereof, or any other properties, rights, or things pertaining to said railroad, or belonging to defendant, were embraced in or covered by said two alleged trust-deeds; and defendant denies, as before herein set forth, that this defendant ever attempted to convey the same, or any part thereof, to said New York State Loan and Trust Company.

And defendant denies all allegations of said bill to the effect that the said premises by complainants claimed to be embraced in said two alleged trust-deeds are scant security for the amount by complainants alleged to be due and owing upon said alleged bonds, and denies all allegations of said bill to the effect that the value of said premises is no more than the amount by complainants claimed to be due and unpaid on said al-
95 leged bonds, but, on the contrary, said premises are well worth $2,500,000, while the pretended claim of the complainants, for the security of which they claim to hold said bonds, amounts to but $615,000, or thereabouts.

And defendant denies, for the reasons hereinbefore stated, that it is essential for the preservation of any rights or equities of the holders of said pretended bonds that the current net income of said premises, by complainants claimed to be embraced in said pretended trust-deeds, should be applied in reduction of said alleged indebtedness, or that for the preservation of any rights or equities of complainants said premises should be upheld, maintained, or kept in repair and operation.

And defendant admits that it is somewhat embarrassed by reason of its indebtedness, a portion of which is now in judgment against defendant, but defendant insists that all its embarrassments from all other sources have not been so great and annoying and injurious to defendant as has that resulting from the unwarranted claim on the part of complainants that they are the holders of bonds of defendant, and have the right to interfere with the operations of defendant, by reason of such pretended holding of bonds secured by said pretended trust-deeds upon the road and property of defendant, all of which pretenses and assertions on the part of complainants are, as hereinbefore shown and stated to be, wholly without foundation in law and fact.

And defendant says it neither admits or denies the allegations of said bill of complaint concerning the claims of the several parties made co-defendants with this defendant in said bill, but defendant says that if any such parties have in fact any lien on the property of defendant, the same is not subordinate to the pretended lien of said pretended trust-deeds.

And defendant, by way of answer to the allegation of said bill to the effect that this defendant is insolvent and unable to pay its debts in full, says it is true that defendant is now, and at the time of the alleged deposit and pledge of the alleged bonds as collateral security for said several alleged notes now claimed to be held by complainants respectively was, quite largely indebted to divers persons, other than complainants, for money, material, and labor furnished this defendant for the construction of said railroad and used by defendant therein, all of which claims are, and were at the time the same accrued, of equal merit with those claimed to be held by complainants respectively, and as a matter of equity ought to share in any appropriation of the property of defendant, either in payment or by way of securing the payment of the indebtedness of defendant.

96 And defendant says that the railroad and property of this defendant connected therewith is of an intrinsic value quite sufficient to pay in full all the legitimate debts of defendant, and was not defendant embarrassed and practically prevented from raising money by an issue of bonds as provided by said charter, by the action of complainants in assuming that they are the holders of bonds of defendant secured by trust-deeds on the property of defendant, and that said bonds are due and payable, and that complainants were entitled to the appointment of a receiver for defendant, and to have said trust-deeds foreclosed and said railroad sold to pay the amount specified in said alleged bonds, this defendant believes it would now be able to make such financial arrangements as would enable it to discharge all its lawful obligations now existing.

And this defendant submits to this honorable court that all and every of the matters in said complainants' bill mentioned and complained of are matters which may be tried and determined at law, and with respect to which the said complainants are not entitled to any relief from a court of equity, and this defendant hopes it shall have the same benefit of this defense as if he had demurred to the said complainants' bill.

And this defendant denies that any other matter or thing in said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein or hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

And this defendant, by way of further answer to said bill (and which further answer is made necessary by the fact that after the answer of this defendant to said bill, as the same was originally filed, was prepared by this defendant, as above set forth, and submitted to counsel for complainants, such counsel amended said bill of complaint by striking therefrom the admissions therein contained to the effect that said two pretended trust-deeds were as to said New York State Loan and Trust Company utterly void and of no effect), says it is advised by counsel, and so states the fact to be, as admitted by complainants in their said bill as originally filed, that said New York State Loan and Trust Company, mentioned in said two pretended trust-deeds, is, and was at the time of the alleged execution of the same respectively, a foreign corporation, having no residence or

place of business in the State of Illinois; that it exists only by virtue of the laws of the State of New York; that it has not, nor ever had, power or capacity to receive or execute trusts of the character by said alleged two trust-deeds pretended to be vested in and conferred upon it; that it is not a railroad corporation even in the State of New York, and cannot exercise or perform the duties thereof in said State of New York or elsewhere, and the policy of the laws of the State of Illinois prohibits it from taking, receiving, or holding the title to the real estate, railroad, and franchises of defendant, and from taking, using, or operating said railroad, its franchises and property, mentioned in said two pretended trust-deeds, and that said New York State Loan and Trust Company has not now nor ever had any interest in said railroad, franchises, or property of defendant by reason of said pretended trust-deeds, but the same, and each of them, are and always were absolutely null and void by reason of the incapacity of said New York State Loan and Trust Company to take and hold said railroad, franchises, and property, as well as for the other reasons hereinbefore set forth.

CHICAGO AND PACIFIC RAILROAD COMPANY,
[SEAL.] By THOMAS S. DOBBINS, *Its President.*
CHARLES D. F. SMITH,
Solicitor for Defendant.
LYMAN TRUMBULL,
Of Counsel.

(Endorsed:) Filed Jan. 15, 1877. Wm. H. Bradley, clerk.

97 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois. In equity.

The joint and several answer of Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, three of the defendants, to the bill of complaint of John I. Blair, The Lackawanna Iron and Coal Company, The Delaware, Lackawanna and Western Railroad Company, and Robert Bayard, complainants, filed in said court against these defendants et al. January 15, A. D. 1877.

These defendants respectively now and at all times hereafter saving and reserving to themselves respectively all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or to so much or such parts thereof as these defendants are advised it is material for them respectively to make answer unto, they, answering, say: They admit the existence of said Chicago and Pacific Railroad Company as a corporation, and that it was created by the act of the legislature in said bill specified, and for the purpose therein stated.

And defendants, further answering, say they are advised by counsel, and believe and so state the fact to be, that all the corporate powers of said railroad company in the matter of borrowing money, and in the execution and disposition of the bonds of said railroad company, and in the secur-

ing the same by mortgage or trust-deed upon said railroad company's railroad, &c., ever conferred upon said railroad company is contained in sections twelve, thirteen, and fourteen of the charter of said railroad company, and in an act of the legislature of said State of Illinois, entitled, "An act to enable railroad companies to borrow money and to mortgage their property and franchises therefor," which act was approved May 7, 1873, and became in force July 1, 1873, which said sections of said charter and said act, are, as these defendants are informed by counsel, fully set out in the answer of said railroad company to said bill of complaint already filed in said court, to which these defendants refer, and by reference make the same a part hereof.

97a

And these defendants, further answering, say that they are advised by counsel, and believe and so state the fact to be, that the two pretended trust-deeds in said bill of complaint described were not, nor were either of them, so authorized or executed by said Chicago and Pacific Railroad Company as to make the same, or either of them, the deed of said railroad company, and the said trust-deeds and each of them were at the time of the alleged making of the same, respectively, and from thence hitherto have been of no binding force and effect upon said railroad company, or a lien upon its railroad or property. And these defendants say they are informed by counsel, and believe, that the legal objections to the sufficiency of said alleged trust-deeds, as incumbrances upon the road and property of said railroad company, are fully and in detail set forth in the answer of said railroad company filed in this cause, and to which these defendants would refer, and by reference make the same a part hereof, without repeating the same in this the answer of these defendants to said bill.

And these defendants say they are not advised, and cannot state whether or not the said alleged two thousand bonds purporting to be the bonds of said railroad company, a portion of which are by the complainants claimed to be held by them as collateral security, &c., were so authorized and executed by said railroad company as to make the same in law the bonds of said company, or whether by reason of any act of said railroad company since the alleged execution of said bonds, said railroad company has so ratified the execution thereof, and adopted said bonds as to make the same in fact and law the bonds of said company, and hence these defendants neither admit or deny the allegations of said bill of complaint in regard to the execution of said pretended bonds by said company.

And these defendants, further answering, say they are not informed, save by the allegations of said bill, as to whether said complainants are, in fact, the holders and owners of the several pretended promissory notes by complainants in said bill respectively alleged to be made by said railroad company, and defendants are not advised as to whether or not said pretended notes were in fact and law so made and executed as to become the notes of said railroad company, or are obligatory upon said company, and hence these defendants neither admit nor deny the allegations of said bill of complaint in respect to the execution of said notes.

97b

And these defendants, further answering, say they are now advised by counsel, and believe and so state the fact to be, that neither said railroad company nor the board of directors thereof, nor any executive officer of said company, has, or ever had or possessed, the power under said charter and the constitution and laws of said State of Illinois to make any pledge of its

bonds as collateral security for its indebtedness, or for any other purpose, and if said pretended bonds are, in law, the bonds of said railroad company, yet said company, or its officers or agents, could make no lawful disposition of said bonds, except by a sale thereof under the care and direction of the board of directors of said company; and that any pledge of such bonds as collateral security, would be in violation of the charter of said company and the constitution and laws of said State of Illinois, and therefore void so far as vesting any right or interest in such pledgee as against said company, or its creditors, and hence these defendants say they deny that said complainants, or either of them, have or possess any right or interest in said pretended bonds, nor have they, or either of them, any claim against or lien upon the said company or its said railroad or property, by reason of such holding of said pretended bonds as by them alleged, or otherwise.

And defendants, further answering, say, if it be true that the consideration for said alleged notes, claimed to be held by said complainants respectively, or the consideration of the said original notes in renewal of which it is said those alleged notes now held by them were given, was for money, iron, rails, and other materials used in the construction of said railroad, as by complainants is alleged, yet these defendants say and insist that such fact, if fact it be, does not and cannot give complainants any right to the relief which they seek in and by said bill, and does not and cannot give complainants any greater equity or interest in said railroad and property of said company than that possessed by these defendants; for these defendants say that they, as a firm, and individually, have performed work and labor for, furnished materials, and advanced in money towards and invested in the purchase of material for and in the construction of said railroad, at the special instance and request of said railroad company, an amount in value much larger than that by complainants claimed to be so furnished in the aggregate, a large portion of which was advanced by defendants before the creation of the pretended debt of the complainants, no portion of which has been repaid to these defendants, but all of which is still due.

97c And these defendants say they are advised by counsel, and believe and so state the fact to be, that there has nothing occurred, or been done or performed, either by said complainants or by said railroad company, or by these defendants, whereby complainants have acquired any lien upon the railroad or property of said railroad company, and at best said complainants are but creditors of said railroad company, without security in law or equity, and standing upon no other or different ground than these defendants, and having no priority of claim over these defendants upon or against said railroad company, or its railroad or property.

And these defendants deny that there is a large amount, or in fact any amount, of real estate, docks, wharves, depot grounds, &c., the title to which stands in the name of this defendant T. S. Dobbins, or in the name of T. S. Dobbins & Company, or in any of the members of said firm, and which is held by him or them in trust only for said railroad company, and really belongs to said railroad company, and was purchased with the money of said railroad company, and for the use and benefit of said railroad company, &c., as alleged in said bill of complaint.

And these defendants say that the title to all lands purchased with the

money of said railroad company, and of right belonging to said railroad company, is now in said company, so far as these defendants are informed. And these defendants say while it is true that there are some lands the title to which is in said T. S. Dobbins, and which, or some portions of which, are used and occupied by said railroad company for the use of said road, yet these defendants say the same was bought by said Dobbins, or by these defendants, with the money or credit of said Dobbins or these defendants, and not with the money or credit of said railroad company. And these defendants say that all such lands held by them or said Dobbins, and used or necessary to be used by said railroad company in the operation of its said road, will be most cheerfully conveyed by said Dobbins, or by these defendants, to said railroad company, if it will pay the amount paid by said Dobbins and these defendants therefor, and assume and discharge all the liability of these defendants by reason of the purchase of such lands.

And these defendants, further answering, say that said railroad and appurtenances, if they are to be held to be security for said alleged bonds, and said complainants are to be held as having security for their respective alleged notes by virtue of the pledge of said pretended bonds, is not a scant security for the several pretended notes of complainants, but, on the contrary, such security would be most ample, as said railroad and appurtenances is worth upwards of two millions of dollars, and the
97*d* alleged indebtedness of said railroad company to complainants severally by them claimed to be secured by the pledge of said bonds is but a little over seven hundred thousand dollars.

And these defendants, further answering, say that the two alleged notes for $50,000 each, claimed to be held by said Bayard, were secured by a trust-deed made by said Dobbins and wife to George W. Smith and William Bayard Cutting, purporting to convey to said trustees certain lands in Cook County, in said State of Illinois, and which lands were at the time of such conveyance worth $200,000, and which lands said Bayard in said bill pretends were sold for the sum of $15,000, or thereabouts, and which lands by such sale, if the same was regular and lawful, as pretended by said Bayard, were acquired by said Bayard for the nominal sum of $15,000, or thereabouts, when in fact said lands so by him claimed to have been sold (but bid in for his benefit) was worth at the time of such pretended sale upwards of $100,000, and in equity and good conscience, if such pretended sale was in fact lawful and binding on said Dobbins, said notes ought to be held to be satisfied by such sale of lands.

And these defendants expressly deny that the so-called "floating" and "unsecured" indebtedness of said railroad company is subordinate in equity to that by complainants claimed to be held by them respectively, but, as before stated, the claims of these defendants against said railroad company by reason of the advancement by them as aforesaid of upwards of half a million of dollars, is, to say the least, of equal equity with the pretended claim of complainants; and defendants insist that complainants ought not to be aided by this court in their endeavor to obtain payment and satisfaction of their said pretended claims against said railroad company at the expense or in exclusion of the equitable claims of these defendants and others against said company and its said railroad and property.

And these defendants submit to this honorable court that all and every of the matters in said complainants' bill mentioned and complained of are

matters which may be tried and determined at law, and with respect to which the said complainants are not entitled to any relief from a court of equity, and these defendants hope they shall have the same benefit of this defense as if they had demurred to the said bill of complaint.

And these defendants deny that any other matter or thing in said bill of complaint contained, material or necessary for these defendants to make answer unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of these defendants.

97e All of which matters and things these defendants are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THOMAS S. DOBBINS.
GEORGE S. BOWEN.
JOHN S. WILCOX.

CHARLES D. F. SMITH,
Solicitor for said Defendants.
ROBERT G. INGERSOLL,
Of Counsel.

(Endorsed:) Filed . Wm. H. Bradley, clerk.

98 In the United States circuit court, northern district of Illinois.

JOHN I. BLAIR ET ALS
vs.
THE CHICAGO AND PACIFIC RAILROAD COMPANY ET ALS. } In chancery.

The replication of John I. Blair, The Lackawanna Iron and Coal Company, The Delaware, Lackawanna and Western Railroad Company, and Robert Bayard, complainants, to the separate answer of The Chicago and Pacific Railroad Company, one of the defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiences of the said answer, for replication thereunto say that they will aver their said bill to be true, certain, and sufficient in the law to be answered unto, and the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things these repliants are and will be ready to aver

99 and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

E. C. & W. C. LARNED,
GEO. W. SMITH,
Complainants.

(Endorsed:) Filed May 5, '77. Wm. H. Bradley, cl'k.

100 In the United States circuit court, northern district of Illinois.

JOHN I. BLAIR ET ALS.
vs.
THE CHICAGO & PACIFIC RAILROAD COMPANY et als. } In chancery.

The replication of John I. Blair, The Lackawanna Iron and Coal Company, The Delaware, Lackawanna and Western Railroad Company, Robert Bayard, complainants, to the joint answer of Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, three of the defendants.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver their said bill to be true, certain, and sufficient in the law to be answered unto, and the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in law to
101 be replied unto, confessed and avoided, traversed or denied, is true, all which matters and things these repliants are and will be ready to aver and prove, as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

E. C. & W. C. LARNED,
GEO. W. SMITH,
Solicitors for Complainants.

(Endorsed:) Filed May 5, '77. Wm. H. Bradley, cl'k.

101*a* In the circuit court of the United States for the northern district of Illinois.

JOHN I. BLAIR AND OTHERS
vs.
THE CHICAGO & PACIFIC RAILROAD COMPANY and others. } In chancery.

The exceptions of Alline P. Woodworth, George B. Carpenter, Albert L. Coe, Samuel H. Robbins, and John A. Tale, intervenors in the above-entitled suit, to the substance of the decree of foreclosure and sale entered herein.

These exceptants object to the enrollment of the proposed decree of foreclosure and sale in the above-entitled action, and for causes of exceptions assign:

First. These exceptants have duly filed their intervening petitions in the above suit praying for the establishment and enforcement of a first and paramount lien upon certain property of the said defendant railroad company; that such proceedings were afterwards had upon their said petitions that the master in chancery of this court made and filed his report allowing the equities of said petitions on the 16th day of July, A. D. 1878, and no exception was filed within the rules of court, and the said mas-

101½ ter's report stands confirmed in all respects and to the same extent as though an order of confirmation had been entered by this court upon said master's report.

Second. These exceptants further show to the court that the said proposed decree is erroneous and defective in that it fails to provide for the payment of these exceptants' first and paramount liens against the property of the said defendant railroad company herein out of the sale proceeds.

Third. Said decree is further erroneous in that it does not provide for the due enforcement of these exceptant' paramount liens.

Fourth. Said decree is erroneous because it provides for the payment to the owners of the corporate bonds before payment of the prior liens of exceptants.

Fifth. These exceptants further show to the court that the said decree is erroneous in so far as it confers authority on the master of this court to receive from the purchaser for the balance of the accepted bid, in lieu of cash, any of the outstanding and unpaid bonds or coupons issued under and secured by said mortgages, at such percentage of the face value thereof as this court shall hereafter direct, instead of adjudging a full cash payment.

Sixth. These exceptants further show to the court that the said decree is erroneous for indefiniteness and uncertainty in that it reserves
102 upon this court the power of decreeing the payment of a further amount in cash by the purchasers at such sale as may be necessary to pay all liens adjudged by this court to be prior to the liens of said mortgages out of the proceeds of such sale, instead of decreeing a cash sale or settling the equities of all parties before any decree or sale.

Seventh. These exceptants further show to the court that the said decree is erroneous in that it constrains the receiver herein, upon affirmance of such sale, to surrender and transfer the possession of all and singular the railroad property of said defendant herein, including the real property described in said master's report, without in any way paying exceptants' claims there'.

Eighth. These exceptants further show to the court that said decree is defective and erroneous because it does not require a sale for cash, and transfer the equities of all parties to the fund arising from proceeds of sale.

HENRY CRAWFORD,
Solicitor for said Intervenors.

(Endorsed:) Filed Dec. 18, 1878. Wm. H. Bradley, cl'k.

103 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for said northern district of Illinois.

JOHN I. BLAIR ET AL.
vs.
CHICAGO AND PACIFIC RAILROAD COMPANY et al. } In equity.

And now comes said Chicago and Pacific Railroad Company, one of the defendants in said cause, by Charles D. F. Smith, its solicitor, and objects

to the entry of the decree referred to in the notice of complainants hereto attached, for the following among other reasons, to wit:

1st. Said proposed decree purports to be based upon the hearing of said cause upon the bill of complaint of the complainants, the answer of this defendant and others, the replications of complainants to such answers, the intervening petitions filed in said cause, the bill of revivor of Elizabeth McEvers Bayard, the report of the master in chancery of said court, and upon the proofs in said cause filed with said master's report, and
104 upon exceptions of this defendant and others to said master's report, when as a matter of fact no such hearing of said cause has taken place by or before said court.

2nd. Said proposed decree overrules and disallows all exceptions to said master's report heretofore filed by this defendant, and ratifies and confirms said report and all matters and things therein contained.

3d. The material matters and things in said decree alleged to have been found and adjudged by the court to have been proven *or* not shown by the evidence to have been so proven, nor are such matters admitted by the answer of this defendant in the case, or otherwise shown by the record to exist.

4th. The facts found by the court to have been proven in said cause do not warrant the orders of the court in said decree contained.

5th. Said proposed decree as a whole and in its details is not warranted by the principles of law & equity applicable to the facts in this case.

CHICAGO AND PACIFIC
RAILROAD COMPANY,
By CHARLES D. F. SMITH,
Its Solicitor.

And the defendants Thomas S. Dobbins, George S. Bowen, and John S. Wilcox, respectively, by Charles D. F. Smith, their solicitor, also
105 come and object to the entry of said proposed decree in the said cause for the reasons above stated and set forth by their codefendant, said railroad company, which reasons they adopt and humbly make a part hereof.

THOMAS S. DOBBINS,
GEORGE S. BOWEN, AND
JOHN S. WILCOX,
By CHARLES D. F. SMITH,
Their Solicitor.

And Charles D. F. Smith, one of the defendants in the above suit, also comes in person and objects to the entry of said proposed decree in the notice hereto attached referred to, for the reasons by said Chicago and Pacific Railroad Company above assigned and set forth, which causes of objection this defendant adopts without repeating the same herein.

CHARLES D. F. SMITH, *Pro Se.*

(Endorsed:) Filed Dec. 28, 1878. W. H. Bradley, cl'k.

3957——6

106 United States circuit court, northern district of Illinois.

MONDAY, *December* 22, A. D. 1879.

Present: Hon. Thomas Drummond, judge.

THE LACKAWANNA IRON AND COAL COMPANY et al. *v.* THE CHICAGO AND PACIFIC RAILROAD COMPANY et al. } In chancery.

AND

JOHN I. BLAIR ET AL. *v.* THE CHICAGO AND PACIFIC RAILROAD COMPANY et al. } In chancery.

It is ordered by the court that the above-entitled causes, numbered respectively 13660 and 14317, be consolidated and constitute one cause.

United States circuit court, northern district of Illinois.

FEBRUARY 12, A. D. 1879.

Present: Hon. Henry W. Blodgett, district judge.

107 JOHN I. BLAIR, THE LACKAWANNA Iron & Coal Company, The Deleware, Lackawanna and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased, *vs.* THE CHICAGO AND PACIFIC RAILROAD Company, Thomas S. Dobbin, George S. Bowen, John S. Wilcox, The New York State Loan and Trust Company, The Central Trust Company of New York, receiver of the New York State Loan and Trust Company; Frederick Kaehler, Charles Kaehler, Marion Munger, William H. Bush, Fowell B. Hill, John W. Walker, John S. Hunt, William F. Hunt, Anton Skow Peterson, Axel Isberg, Edward C. Lovell, executor of estate of John Morse; Ezra May, Alexander Hawthorne, Anne P. Adams, Herman H. Hoffmann, Seneca D. Kimbark, William H. Sessin, John Suermeier, August Muller, Horace Taber, Ambrose S. Gurnee, Andrew C. Hawkins, Daniel S. Wells, Henry L. Norton, Frank E. Walker, The Backus Oil Company, The Miami Powder Company, Hiram Burchfield, Edwin Hait, George Kozier, George F. Lewis, The Chicago and Northwestern Railway Company, Henry Ultes, Milton Harger, Charles D. F. Smith, defendants, and Moses Taylor, The National City Bank of New York, and Lucius B. Otis, receiver of the State Savings Institution; and Joel D. Harvey, and Joseph G. Morrison, who have intervened herein.

108 This cause having been brought on to be heard upon the original bill of complaint herein, as amended, filed on the fifteenth day of January, A. D. 1877, and amended on the thirtieth day of March, A. D. 1877, and on the tenth day of July, A. D. 1877, heretofore taken as confessed by and against the defendants Frederick Kaehler, Charles Kaehler, Marion Munger, Anton Skow Peterson, Axel Isberg, Anne P. Adams, Herman H. Hoffmann, John Suermeier, August Muller, The Backus Oil Company, The Miami Powder Company, Hiram Burchfield, Edwin Hait, George Kozier, The Chicago and Northwestern Railway Company, and upon the answers of The Chicago and Pacific Railroad Company, Thomas S. Dobbins, George S. Bowen, John S. Wilcox, S. D. Kimbark, William H. Lisson, William H. Bush, and Fowell B. Hill, Horace Faber, Daniel S. Wells, Henry L. Norton, Frank E. Walker, The New York State Loan and Trust Company, Andrew C. Hawkins, Henry Ultes, John W. Walker, John S. Hunt, William H. Sisson, Edward C. Lovell, executor of the estate of John Morse; Ezra May, Alexander Hawthorne, Charles D. F. Smith, George F. Lewis, William F. Hunt, Milton Harger, and upon the replications filed to said answers, and upon the intervening petitions filed herein, and the pleadings and proofs therein, and upon the bill of revivor of Elizabeth McEvers Bayard, and upon the report of Henry W. Bishop, esq., master in chancery of this court, which report bears date the fourth day of November, A. D. 1877, and was made in pursuance of orders of this court heretofore entered in this cause referring it to the said master in chancery to take proof herein and
109 report the same to his court, together with the amount due the complainant, and the said master's finding therein, which said master's report was filed herein on the seventh day of December, A. D. 1877, and upon the proofs in said cause filed with said master's report, and upon the exceptions of the said defendants The Chicago and Pacific Railroad Company, Thomas S. Dobbins, George S. Bowen, John S. Wilcox, and others filed herein, and heretofore fully argued by counsel and considered and taken under advisement by the court, and the court being now fully advised in the premises, it is ordered, adjudged, and decreed that said exceptions to said master's report be, and they are hereby, overruled and disallowed, and the said master's report and all matters and things therein contained are in all respects ratified and confirmed.

And thereupon the court doth find it to be approved, and doth find and adjudge that all the material allegations in said bill of complaint, as amended, contained and set forth are true, and that the equities are with the complainants as against the defendants herein; and that there were issued, and are now outstanding and unpaid, all of the bonds secured by the said mortgages, viz, two thousand bonds each for the sum of one thousand dollars, and numbered from one (1) to two thousand (2000), inclusive, together with forty (40) coupons attached to each of said
110 bonds, each for the sum of thirty-five dollars; and that the said two thousand bonds and said coupons thereto attached are all that have been issued under or secured by the said mortgages in said bill set forth, or by either of them; and that the holders of said bonds, upon default being made in the payment of the interest coupons thereon, elected to declare and did declare the principal of the said bonds to be due before the commencement of this suit, in accordance with the provisions and require-

ments of the said mortgage, and that the principal of the said bonds, together with such of the coupons thereto attached as were past due at the time of the filing of the original bill herein, are hereby declared and decreed to be due and payable.

And that the said complainant John I. Blair is the lawful holder of one hundred and twenty of said bonds, being the bonds numbered 161 to 200, 421 to 430, 771 to 800, 891 to 900, and 1001 to 1030, all inclusive, with forty coupons attached to each of said bonds, as in said master's report specified, which said bonds and coupons are held by said Blair as security for the sum of forty-nine thousand seven hundred and eighty-six dollars and fifty-two cents, with interest on the sum of forty-one thousand three hundred and thirty-three dollars and thirty-two cents after the fourth day of November, A. D. 1877, at the rate of ten per cent. per annum, until the date thereof, amounting in the whole to the sum of ($54,945.02) fifty-four thousand nine hundred and forty-five dollars and two
111 cents, which said last-mentioned sum is due to the said John I. Blair at the date hereof from the said Chicago and Pacific Railroad Company.

And that the said complainant The Deleware, Lackawanna and Western Railroad Company is the lawful holder of fifty-five of said bonds, being those of the said bonds numbered from numbers 411 to 420, 431 to 440, 681 to 700, 901 to 915, all inclusive, with forty coupons attached to each of said bonds, as in said master's report specified, which said last-mentioned bonds and coupons are held by the said last-named complainant as security for the sum of thirty-six thousand one hundred and thirty-six dollars and seventy-three cents, with interest on the sum of thirty thousand three hundred and seventy-five dollare and seventy-three cents after the fourth day of November, A. D. 1877, at the rate of ten per cent. per annum, until the date hereof, amounting in the whole to the sum of ($40,001.13) forty thousand and one dollars and thirteen cents, which said last-mentioned sum is due to the said Deleware, Lackawanna and Western Railway Company at the date hereof from the said Chicago and Pacific Railroad Company.

And that the said complainant The Lackawanna Iron and Coal Company is the lawful holder of eight hundred and eighty-two of said bonds, numbered from Nos. 371 to 392, 441 to 540, 1241 to 2000, all inclusive, with forty coupons attached to each of said bonds, as in said mas-
112 ter's report specified, which said bonds and coupons are held by the said last-named complainant as security for the sum of four hundred and four thousand eight hundred and eleven dollars and fifteen cents, with interest on the sum of three hundred and thirty-seven thousand seven hundred and sixty-three dollars and seventy-two cents after the fourth day of November, A. D. 1877, at the rate of ten per cent. per annum, until the date hereof, amounting in the whole to the sum of four hundred and forty-seven thousand seven hundred and eighty-two dollars and seventeen cents ($447,782.17), which said last-mentioned sum is due to the said Lackawanna Iron and Coal Company at the date hereof from the said Chicago and Pacific Railroad Company.

And that the said Elizabeth McEvers Bayard, as sole executrix and legatee of Robert Bayard, deceased, is the lawful holder of two hundred of said bonds, with coupons attached, numbered from 121 to 130, 201 to

300, and 801 to 890, all inclusive, which said bonds and coupons are held by said Elizabeth McEvers Bayard as security for the sum of eighty-five thousand dollars, with interest thereon at the rate of ten per cent. per annum, being the balance remaining unpaid upon two certain promissory notes of the said Chicago and Pacific Railroad Company, each bearing date January 1, 1874, and each being for the sum of fifty thousand dollars, payable respectively in eight and twelve months from date,
113 with interest at ten per cent. after due, and upon the principal of that one of which notes which was payable eight months after date there was paid, under date of September 18, 1876, the sum of fifteen thousand dollars, the said indebtedness amounting to the sum of ($126,568.55) one hundred and twenty-six thousand five hundred and sixty-eight dollars and fifty-five cents, which said last-mentioned sum is due to the said Elizabeth McEvers Bayard at the date hereof from the said Chicago and Pacific Railroad Company. And the court doth further find that since the filing of the master's report herein, and the exceptions thereto, the said Elizabeth McEvers Bayard has sold and transferred to Lucius B. Otis, as receiver of the State Savings Institution, the four promissory notes mentioned in said report, bearing date March 1, 1876, made by Thomas S. Dobbins, for the sum of thirty thousand dollars each, and also the bonds and coupons therein found to be a security for said notes, to wit, bonds numbered 1 to 120, 141 to 160, 321 to 350, 621 to 630, and 751 to 770, all inclusive.

And that Lucius B. Otis, as such receiver, is the lawful owner and holder of such last-mentioned two hundred bonds and the coupons thereon, and the indebtedness thereby secured, which are mentioned and described in his intervening petition herein. And that there is now, at the date of the entry of this decree, due and payable from and by the said Chicago and Pacific Railroad Company to the said intervening petitioner Lucius B. Otis, as the receiver of the said State Savings Institution, the sum of one hundred and fifty-five thousand three hundred and
114 sixty-six dollars and sixty-six cents (155,366.66), parcel of the indebtedness secured by the said mortgages aforesaid.

And that the said intervening petitioner Moses Taylor is the lawful holder of one hundred and fifty of said bonds, numbered from Nos. 1091 to 1240, both inclusive, with forty coupons attached to each bond, as in said master's report specified, which said bonds and coupons are held by the said Taylor as security for the sum of sixty-two thousand two hundred and sixty-four dollars and two cents, with interest on the sum of fifty-one thousand six hundred and sixty-six dollars and sixty-six cents after the first day of November, A. D. 1877, at the rate of ten per cent. per annum, till the date hereof, amounting in the whole to the sum of ($68,837.14) sixty-eight thousand eight hundred and thirty-seven dollars and fourteen cents, which said last-named sum is due to the said Moses Taylor at the date hereof from the said Chicago and Pacific Railroad Company.

And that the said intervening petitioner The City Bank of New York is the lawful holder of one hundred and twenty of said bonds, being those of said bonds numbered 393 to 410, 641 to 652, 961 to 990, 1031 to 1090, all inclusive, with forty coupons attached to each of said bonds, as in the said master's report specified, which said bonds and coupons are held by the said City Bank as security for the sum of fifty thousand one

115 hundred and thirty-three dollars and eighty-seven cents, with interest on the sum of forty-one thousand three hundred and thirty-three dollars and thirty-three cents after the fourth day of November, A. D. 1877, at the rate of ten per cent. per annum, until the date hereof, amounting in the whole to the sum of ($55,392.37) fifty-five thousand three hundred and ninety-two dollars and thirty-seven cents, which said last-named sum is due to the said City Bank at the date hereof from the said Chicago and Pacific Railroad Company.

And the court doth further find that Joel D. Harvey, an intervening petitioner herein, is the lawful owner and holder of one hundred and five of said bonds, numbered as follows: From 131 to 140, both inclusive, from 541 to 605, both inclusive, 631 to 635, both inclusive, and from 656 to 680, both inclusive, with forty coupons attached to each of said bonds, the principal and interest of which are wholly unpaid.

And the court doth further find that Joseph G. Morrison, an intervening petitioner herein, is the lawful owner and holder of twenty of said bonds, numbered from 301 to 320, both inclusive, with forty coupons attached to each of said bonds, the principal and interest of which are wholly unpaid. And that there are outstanding and unpaid one hundred and forty-eight of the said bonds, each for the sum of one thousand dollars, which said bonds have not been produced or proven in said suit.

116 And it further appearing to said court that the persons owning the said last-mentioned bonds are numerous and unknown, and that the said suit was instituted in behalf of the holders of all of the said bonds secured by the said mortgages, and that the rights, interests, and equities of the said bondholders who have not appeared, or been made parties, or intervened herein, can be fully secured and preserved by the decree of this court herein without requiring the owners of the said bonds to be made parties thereto;

And that John M. Whitman, who was on the twenty-seventh day of May, A. D. 1876, by a decree of this court, appointed receiver of the said Chicago and Pacific Railroad Company, under and by virtue of a decretal order of this court, made and entered in a suit wherein the Lackawanna Iron and Coal Company and others were complainants and the Chicago and Pacific Railroad Company and others were defendants, on the said twenty-seventh day of May, A. D. 1876, and in pursuance of a decretal order of this court entered in the said last-mentioned case, on the seventeenth day of June, A. D. 1876, the said John M. Whitman, as such receiver, has expended the sum of one hundred and seventy-five thousand dollars for the purposes in said decree specified, and has, under and in pursuance of said decretal order last mentioned, issued his certificates of indebtedness as such receiver, for moneys advanced and loaned to him for

117 such purposes, and that there is now due and outstanding and unpaid of the said receivers' certificates so issued as aforesaid the sum of one hundred and sixty thousand dollars, which certificates were of the dates, tenor, and amounts, and payable to the respective parties shown and specified in the said master's report, with interest thereon, at the rate of ten per cent. since the sixteenth day of June, A. D. 1878; and that the said certificates were by the said decretal order of this court last mentioned made a first lien upon all the property, real and personal, of the said railroad company:

It is therefore, upon motion of counsel for the said complainants, ordered, adjudged, and decreed, and this court by virtue of the power and authority in it vested doth order, adjudge, and decree, that the said defendant The Chicago and Pacific Railroad Company pay or cause to be paid to the said complainants and the above-mentioned intervening petitioners in this cause, or their solicitors, and to the said John M. Whitman, receiver, or his solicitors, on or before the twenty-fourth day of February, A. D. 1879, the respective sum and sums of money so decreed and adjudged to be due to the respective complainants and intervenors, and the said amount adjudged to be due from the said railroad company on the said receivers' certificates, with the interest thereon, from the respective dates aforesaid, and at the respective rates aforesaid, and the costs of suit taxed in said cause.

118

And in case of such payment being made, the said bonds and coupons and receiver's certificates shall be thereupon surrendered to the said Chicago and Pacific Railroad, and said suit shall be dismissed, which said aggregate sums of money with the interest thereon are a lien and charge upon all the property, real and personal, of the said railroad company, described in and conveyed by the said mortgages set forth in said bill of complaint, or which has since the date of said mortgages been acquired by the said railroad company or by the said receiver, and hereinafter more specifically described.

And that in default of said payment by said company or by some of the other defendants in said suit, all the right, title, interest, and equity of redemption of the said Chicago and Pacific Railroad Company or of any of the said defendants in and to the said property described in said mortgages, or which has been since the date thereof acquired by the said Chicago and Pacific Railroad Company, or which has been acquired by the said John M. Whitman, receiver, together with all the rents, issues, incomes, and profits thereof, shall be sold by or under the direction of the said Henry W. Bishop, the master in chancery of this court, together as one property and not separate parcels, and in the manner hereinafter directed, in order to satisfy the amount due as aforesaid, the costs of this proceeding, and the said several sums herein decreed to be paid, or so much thereof as such property will bring. And that said master make such sale in accordance with the course and practice of this court, and that at such sale the complainants or any of the parties or intervenors to said cause may become the purchasers.

119

That any sale hereunder shall be at public auction, to the highest bidder. That the sum of sixty thousand dollars shall be paid in cash at the time of sale, and the balance as hereinafter provided when said sale (to be made in Chicago, in the State of Illinois, at such time and place as said master shall in the notice of such sale appoint), shall be confirmed by the court; that notice of such sale shall be given by said master by advertisement thereof daily—six times in each week, for three successive weeks preceeding the day of sale—in one daily newspaper, in the English language, of general circulation, published in said city of Chicago. That after the payment to the said master of said sum of sixty thousand dollars in cash of the sum bid by the purchaser at said sale the master may receiver from said purchaser for the balance of the sum bid at such sale in lieu of cash any of the outstanding and unpaid receiver's certificates aforesaid for

the full face value thereof, or any of the outstanding and unpaid bonds or coupons issued under and secured by the said mortgages, viz,
120 the said bonds numbered from number one to number two thousand, inclusive, each for the sum of one thousand dollars, at such percentage of the face value thereof as this court shall hereafter direct at the approval of said sale.

And the purchaser or purchasers at said sale shall be required at such times as this court shall hereafter order to pay such further amount of cash, in addition to the said sum of sixty thousand dollars hereby required to be paid at the time of the said sale, as may be necessary to pay such claims or liens as shall have been by this court decreed and adjudged to be prior to the lien of said mortgages, and ordered to be paid out of the proceeds of such sale.

That out of the purchase-money received by the said master from such sale he shall first pay the costs of this suit, together with the costs and expenses of executing this decree; and to E. C. & W. C. Larned and to Geo. W. Smith, solicitors for the complainants, and to Hon. C. B. Lawrence, of counsel for complainants, the said solicitors above named having instituted and prosecuted this suit to final decree in behalf of and for the benefit of all the holders of bonds secured by the said mortgages, such sums for their services in said cause as shall be hereafter allowed by said master and approved by this court.

That the master shall pay over the balance of the proceeds of said sale to the clerk of this court, who shall apply the same under the direction of this court:

121 First. To the payment of the amount of the said receivers' certificates outstanding and unpaid, which said receivers' certificates shall be first paid in full, principal and interest, out of said proceeds of sale.

Second. To the payment of any amounts which shall have been decreed and adjudged by the court to be prior and paramount liens to the liens of the said mortgages and ordered to be paid out of said proceeds of sale.

Third. To the payment of the respective amounts so found to be due as aforesaid to the said respective parties complainant and intervening bondholders as aforesaid, together with the interest thereon, for the security whereof the said parties and intervenors hold the said bonds and coupons of the said railroad company as aforesaid, and to any lawful owners of the bonds of said company, who have proved or shall hereafter (as this court shall direct) prove their title to such bonds as such owners, and to any lawful holders of any of said bonds of said railroad company as security for any indebtedness of said company, who have proved or shall hereafter (as this court shall direct) prove such indebtedness and their title to such bonds as such holders, paying such indebtedness in full if the amount be sufficient for that purpose, and if not, applying and appropriating toward the payment of such amounts so due to said complainants and intervenors and owners as aforesaid the proportion of such proceeds of sale to
121½ which such respective holders and owners of the said bonds are pro rata entitled upon the presentation and surrender of the said bonds and coupons and receiver's certificates.

And said clerk shall mark on each certificate, bond, and coupon so surrendered the amount paid thereon, and deposit the same in his office.

And in case the amount of such proceeds of sale shall be more than

sufficient (after payment of all said costs and expenses) to pay the entire amount due on the said receiver's certificates, principal and interest, and the entire amounts due said respective complainants and intervenors for which the said bonds are held as security as aforesaid, together with the interest due thereon, and the entire amount due to the owners or holders of any of said bonds, then the overplus shall be paid to the said Chicago and Pacific Railroad Company, or to such parties or intervenors having judgments or liens against said railroad company as this court shall direct, in such order of priority and in such proportions as this court shall order.

And it is further ordered, adjudged, and decreed that if the moneys arising from said sale shall be insufficient to pay the amounts so due the complainants, and to the owners and holders of the said bonds as aforesaid, with interest as aforesaid, after deducting the costs and expenses of said sale as aforesaid, that said master specify the amount of such deficiency in his report of said sale, and that on the coming in and confirma-
122 tion of said report the said defendant The Chicago and Pacific Railroad Company which is personally liable for the payment of the debt secured by said mortgage and due to said complainants as aforesaid, shall pay to the said complainants the amount of such deficiency, with interest thereon, and that the complainants have execution therefor, and that the above-mentioned intervenors at the said last-mentioned time shall have leave to apply for an order determining the amount remaining unpaid upon their respective claims and for the payment thereof by the said defendant railroad company.

That the said John M. Whitman, the receiver aforesaid, shall account for and pay over to the said master, and that said master is hereby authorized to receive from said receiver the net earnings and income of said railroad from this date up to the day of confirmation of said sale; and in case of any decree being entered for a deficiency as aforesaid, from thenceforth until any purchaser at said sale shall be put into and take possession of the said road under the order of this court, or such deficiency shall have been fully paid; and any amount so accounted for and paid over to said master by said receiver shall be added to the proceeds of sale and applied in the same manner as herein directed.

And the said clerk is hereby ordered and directed, on the receipt of any money from the master aforesaid for distribution, to give notice to
123 the holders of said bonds, coupons, and receiver's certificates entitled to share in the distribution thereof to present their bonds, coupons, and receiver's certificates for payment of the respective amounts to be paid thereon by said clerk at some place to be designated in said notice by publication for once a week for four successive weeks in the Chicago Daily Tribune.

That upon the completion and confirmation by the court of any sale made under and in pursuance of this decree the said master shall make, execute, and deliver to the purchaser or purchasers of the said property a certificate of purchase, which certificate shall specify the property so purchased and the sum paid therefor and the time when the purchaser will be entitled to a deed for the property so purchased, unless the same shall be redeemed according to law; and the said master shall also file in the office of the recorder of the counties of Cook, Du Page, De Kalb, Kane, and Ogle a duplicate of such certificate signed by him.

And it is further ordered, adjudged, and decreed that the defendants and all persons claiming by, through, or under them since the commencement of this suit be forever barred and foreclosed from all equity of redemption and claim of, in, or to said mortgaged premises or any part thereof, if the same are not redeemed according to law by said defendants, their heirs, executors, administrators, or grantees within twelve months next after the day of sale, and by all judgment creditors and their repre-
124 sentatives and assigns within fifteen months next after the day of said sale.

And if the said mortgaged premises are not redeemed as aforesaid, then and in that case, upon the production to the master in chancery of said court and filing in his office of the said certificate of purchase executed by said master as aforesaid to the purchaser or purchasers of said mortgaged premises by such purchaser or purchasers, his or their representatives or assigns, the said master in chancery shall, under the direction of this court, make, execute, and deliver to such purchaser or purchasers or his or their representatives or assigns a good and sufficient conveyance, in fee-simple, of said premises; and at the time of the execution of the said deed by the said master, the said John M. Whitman, receiver, shall thereupon make, execute, and deliver to the said purchaser or purchasers a good and sufficient deed of conveyance of any and all property of the said railroad company vested in or standing in the name of the said receiver, or to which said receiver hath in any way acquired title.

And it is further ordered, adjudged, and decreed that upon the execution and delivery of the conveyance or conveyances as aforesaid the said purchaser or purchasers, his or their representatives or assigns, be let into possession of the said mortgaged premises so conveyed to him or them; and that any of the parties in this cause who may be in possession
125 of said premises or any part thereof, and any person who, since the commencement of this suit, has come in possession under them, or either of them, on the production of the master's deed of conveyance and a certified copy of the order of this court confirming the said sale and conveyance, shall surrender possession thereof to such purchaser or purchasers, their representatives or assigns, and on refusal so to do will be considered in contempt of this court.

And it is further ordered that the said master make report to this court of his actings and doings in the premises with all convenient speed after said sale shall have taken place.

The property hereby directed to be sold, which has been reduced to and is now in the actual possession of the receiver, is as follows, viz: All the right, title, interest, and equity of redemption of the said Chicago and Pacific Railroad Company, or of the said John M. Whitman, receiver, or of any of the said defendants in and to all and singular the railroad of the said Chicago and Pacific Railroad as the same is now surveyed, laid out, and constructed, extending from Chicago avenue, in the city of Chicago, in said State of Illinois, to the town of Byron, in Ogle County, in said State, a distance of eighty-eight miles, including the road-bed, station or station houses, depot grounds, rails, ties, fences, bridges, viaducts, and culverts, and all other buildings and structures, as well as engine-houses and machine and other shops used in connection with said railway, and
126 all the machinery and tools and fixtures therein, and also all fran-

chises connected with or relating to the construction, maintenance, or use of the said railway, together with the right or franchise of extending, constructing, maintaining, and operating a railroad from said town of Byron westward to the city of Savanna, on the Mississippi River, vested in said railroad company by the act incorporating the same, as well all other rights, privileges, and franchises belonging to the said railroad company; also all the supplies, materials, tools, personal property, fixtures, and appurtenances belonging to or in anywise connected with or appurtenant to the said road; also all the rolling stock, locomotives and tenders, passenger, freight, and stock, and milk cars of and belonging to said road or purchased by the said receiver, which said rolling stock consists of the following items, viz: 60 box cars, 1 refrigerator car, 50 flat cars, 30 stock cars, 3 way cars, 1 caboose car, 4 passenger cars, 1 passenger and baggage car, 2 baggage cars, 3 milk cars, 20 hand cars (more or less), 7 locomotives and tenders.

The said sale to be made without prejudice to the following mortgages on portions of said depot grounds, which mortgages and the amounts thereby secured are prior liens to the said mortgages foreclosed in this suit, as to the property in the said mortgages respectively described, but are not a lien upon any other property.

127 A mortgage or trust-deed dated August 6th, 1872, and recorded in Cook County registry in book 156 of records, page 166, Sept. 5, 1872, executed by Thomas S. Dobbins to John A. Yale to secure the sum of $21,000 and interest at eight per cent., conveying lots one (1) to eight (8), being all of block 79 of Elston's addition to Chicago.

A mortgage dated February 1, 1872, and recorded in Cook County registry September 5, 1872, in book 149, p. 419, executed by Thomas L. Dobbins to John A. Yale to secure the sum of $52,419.92 with interest at seven per cent., conveying lots two (2), three (3), and four (4) in block 80, and lots one to ten, inclusive, and lots fourteen to twenty-three, inclusive, in block eighty-one in Elston's addition to Chicago.

Also a trust-deed from Thomas S. Dobbins to Albert L. Coe, dated May 12, 1873, and recorded July 8, 1873, to secure $15,750 and interest at eight per cent., conveying lot three (3) in block 8, in Sheffield's addition to Chicago.

Also a trust-deed dated February 1, 1872, from Thomas S. Dobbins to Mahlon D. Ogden, trustee of Chicago Land Company, recorded May 12, 1873, to secure $67,000 and interest at seven per cent., conveying block 83, and lots 5, 6, 7, 8, 9, and 10 in block 80, all in Elston's addition to Chicago.

123 In the circuit court of the United States for the northern district of Illinois. In chancery.

JOHN I. BLAIR, THE LACKAWANNA IRON AND Coal Company, The Deleware, Lackawanna and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased,

vs.

THE CHICAGO AND PACIFIC RAILROAD COMPANY, Thomas S. Dobbins, George S. Bowen, John S. Wilcox, The New York State Loan and Trust Company, The Central Trust Company of New York, receiver of the New York State Loan and Trust Company; Frederick Kaehler, Charles Kaehler, Marion Munger, William H. Bush, Fowell B. Hill, John W. Walker, John S. Hunt, William F. Hunt, Anton Skow Peterson, Axel Isberg, Edward C. Lovell, executor of estate of John Morse; Ezra May, Alexander Hawthorne, Anne P. Adams, Herman H. Hoffmann, Seneca D. Kimbark, William H. Sessin, John Suermeier, August Muller, Horace Faber, Ambrose S. Gurnee, Andrew C. Hawkins, Daniel S. Wells, Henry L. Norton, Frank E. Walker, The Backus Oil Company, The Miami Powder Company, Hiram Burchfield, Edwin Hait, George Kozier, George F. Lewis, The Chicago
129 and Northwestern Railroad Company, Henry Ultes, Milton Harger, Charles D. F. Smith, defendants, and Moses Taylor, the National City Bank of New York, and Lucius B. Otis, receiver of the State Savings' Institution; and Joel B. Harvey and Joseph G. Morrison, who have intervened herein.

Master's report of sale.

To the honorable the judge of the said court:

The undersigned, Henry W. Bishop, as master in chancery of the said court, respectfully reports:

That in pursuance of a decree of the said court, entered in the above-entitled cause on the twelfth day of February, A. D. 1879 (one thousand eight hundred and seventy-nine), wherein it was among other things ordered, adjudged, and decreed that the said defendant The Chicago and Pacific Railroad Company pay or cause to be paid to the said complainants and the therein-mentioned intervening petitioners in this case, or their solicitors, and to the said John M. Whitman, receiver, or his solicitors, on or before the twenty-fourth day of February, A. D. 1879, the respective sum or sums of money therein decreed and ad-

judged to be due to the respective complainants and intervenors and the amount therein adjudged to be due from the said railroad company on the said receiver's certificates, with the interest thereon from the respective dates therein aforesaid, and at the respective rates therein aforesaid, and the costs of suit taxed in said cause, and that
130 in default of said payment by said company, or by some of the other defendants in said suit, all the right, title, interest, and equity of redemption of the said Chicago and Pacific Railroad Company, or of any of the said defendants in and to the said property described in the mortgages therein mentioned, or had been since the date thereof acquired by the said Chicago & Pacific Railroad Company, or which had been acquired by the said John M. Whitman, receiver, together with all the rents, issues, and profits thereof, should be sold by or under the direction of the said Henry W. Bishop, master in chancery of this court, together as one property, and not as separate parcels, and in the manner thereinafter directed, in order to satisfy the amount due as aforesaid, the costs of these proceedings and the said several sums therein decreed to be paid, or so much thereof as such property would bring, and that said master make such sale in accordance with the course and practice of this court; and that at such sale the complainant or any of the parties or intervenors to said cause might become purchasers; that any sale thereunder should be at public auction to the highest bidder; that the sum of sixty thousand dollars ($60,000) should be paid in cash at the time of sale, and the balance, as thereinafter provided, when said sale (to be made in chancery, in the State of Illinois, at such time and place as said master
131 should in the notice of such sale appoint) should be confirmed by the court.

That notice of such sale should be given by said master by advertisement thereof daily, six times in each week, for three successive weeks preceding the day of sale, in one daily newspaper, in the English language, of general circulation published in the said city of Chicago. That the undersigned, as such master in chancery, in accordance with the said decree of the said court, advertised the said premises and property for sale at public auction to the highest bidder for cash in hand in the Inter-Ocean, a daily newspaper of general circulation printed and published in the city of Chicago, county of Cook, and State of Illinois, the date of the first paper containing the said advertisement being the seventh day of April, A. D. 1879, and the date of the last paper containing the same being the first day of May, A. D. 1879.

The said advertisement having been published in said newspaper, to wit, daily, six times in each week, for three successive weeks preceding the day of sale, as appears by a certified copy of the said advertisement and the certificate of publication thereof hereto attached and made a part hereof; that at the hour, day, and place fixed and mentioned in the said advertisement, to wit, at the hour of eleven o'clock in the forenoon of Thursday, the first day of May, A. D. 1879, at the front door of the building
132 wherein this court is held, now called the National Life Building, and known as numbers 157 to 163 La Salle street, in the city of Chicago, in Cook County, Illinois, viz, the undersigned, as such master in chancery, did offer the premises and property in the said advertisement and decree mentioned and described as "All the right, title, interest, and

equity of redemption of the said Chicago & Pacific Railroad Company, or of John M. Whitman, receiver, or of any of the said defendants, in and to all and singular the railroad of the said Chicago and Pacific Railroad, as the same is now surveyed, laid out, and constructed, extending from Chicago avenue, in the city of Chicago, in said State of Illinois, to the town of Byron, in Ogle County, in said State, a distance of 88 miles, including the road-bed, stations, or station-houses, depot grounds, rails, ties, fences, bridges, viaducts, and culverts, and all other buildings and structures, as well as engine-houses, and machine and other shops used in connection with said railway, and all the machinery, and tools, and fixtures therein; and also all franchises connected with or relating to the construction, maintenance, or use of the said railway, together with the right or franchise of extending, constructing, maintaining, and operating a railroad from said town of Byron westward to the city of Savanna, on the Mississippi River, vested in said railroad company by the act incor-
133 porating the same, as well as all other rights, privileges, and franchises belonging to the said railroad company; also all the supplies, materials, tools, personal property, fixtures, and appurtenances belonging to or in anywise connected with or appurtenant to the said road; also all the rolling stock, locomotives and tenders, passenger, freight, and stock, and milk cars of and belonging to said road or purchased by the said receiver, which said rolling stock consists of the following items, viz, 60 box cars, 1 refrigerator car, 50 flat cars, 30 stock cars, 3 way cars, 1 caboose car, 4 passenger cars, 1 passenger and baggage car, 2 baggage cars, 3 milk cars, 20 hand cars (more or less), 7 locomotives and tenders.

"The said sale to be made without prejudice to the following mortgages on portions of said depot grounds, which mortgages and the amounts thereby secured are prior liens to the mortgages foreclosed in the said suit as to the property in the said mortgages respectively described, but are not a lien upon any other property:

"A mortgage or trust-deed, dated August 6th, 1872, and recorded in Cook County registry, in book 156 of records, page 166, September 5, 1872, executed by Thomas S. Dobbins to John A. Yale, to secure the sum of $21,000 and interest at eight per cent., conveying lots one (1) to eight (8), being all of block 79 of Elston's addition to Chicago.

"A mortgage, dated February 1, 1872, and recorded in Cook
134 County registry, September 5, 1873, in book 149, p. 419, executed by Thomas S. Dobbins to John A. Yale, to secure the sum of $52,419.92, with interest at seven per cent., conveying lots two (2), three (3), and four (4) in block 80, and lots one to ten, inclusive and lots fourteen to twenty-three inclusive, in block eighty-one, in Elston's addition to Chicago.

"Also a trust-deed from Thomas S. Dobbins to Albert L. Coe, dated May 12, 1873, and recorded July 8, 1873, to secure $15,750 and interest at eight per cent., conveying lot three (3) in block 8, in Sheffield's addition to Chicago.

"Also a trust-deed, dated February 1, 1872, from Thomas S. Dobbins to Mahlon D. Ogden, trustee of Chicago Land Company, recorded May 12, 1873, to secure $67,000 and interest at seven per cent., conveying block 83, and lots 5, 6, 7, 8, 9, and 10, in block 80, all in Ellston's addition to Chicago.

"The sum of sixty thousand dollars ($60,000) shall be paid in cash at the time of sale, and the balance as provided in the said decree, to which, for more specific information in regard to the terms of sale and the property reference may be had"—for sale at public auction to the highest bidder, and together as one property, and not as separate parcels, and in the manner directed in the said decree and in accordance with the course and practice of the said court. Whereupon John H. Wrenn, for and on be-
135 half of John I. Blair, of Blairstown, New Jersey; Edwin F. Hatfield, jr., and William Bayard Cutting, both of the city and State of New York, bid for such premises and property the sum of nine hundred and sixteen thousand one hundred dollars ($916,100); and that being the highest bid therefor, the undersigned struck off and sold to the highest bidders the said premises and property at the price so bid; and as required by the terms of said decree, the said Blair, Hatfield, and Cutting, purchasers as aforesaid, have paid to me the sum of sixty thousand dollars ($60,000) in cash.

All of which is respectfully submitted.

May 1, 1879.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

136 LEGAL.

Master's sale.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the northern district of Illinois. In chancery.

JOHN I. BLAIR, THE LACKAWANNA IRON AND Coal Company, the Deleware, Lackawanna and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased,

vs.

THE CHICAGO AND PACIFIC RAILROAD COMpany, Thomas S. Dobbins, George S. Bowen, John S. Wilcox, The New York State Loan and Trust Company, The Central Trust Company of New York, receiver of the New York State Loan and Trust Company; Frederick Kaehler, Charles Kaehler, Marion Munger, William H. Bush, Fowell B. Hill, John W. Walker, John S. Hunt, William F. Hunt, Anton Skow Peterson, Axel Isberg, Edward C. Lovell, executor of estate of John Morse; Ezra May, Alexander Hawthorne, Anne P. Adams, Herman H. Hoffmann, Seneca D. Kimbark, William H. Lesson, John Suermeier, August Muller, Horace Taber, Ambrose S. Gurnee, Andrew C. Hawkins, Daniel S. Wells, Henry L. Norton, Frank E. Walker, The Backus Oil Company, The Miami Powder Company, Hiram Burchfield, Edwin Hait, George Kozier, George F. Lewis, The Chicago and Northwestern Railroad Company, Henry Ultes, Melton Harger, Charles D. F. Smith, defendants, and Moses Taylor, The National City Bank of New York, and Lucius B. Otis, receiver of the State Savings Institution; and Joel D. Harvey and Joseph G. Morrison, who have intervened herein.

137 Notice is hereby given that in pursuance of a decree of the said court, entered in the above-entitled cause on the twentieth day of February, A. D. 1879, I, Henry W. Bishop, master in chancery of the said court, will sell at public auction, to the highest bidder, and together as one property, and not as separate parcels, and in the manner directed in the said decree, and in accordance with the course and practice of the said court, at the front door of the building wherein this court is held, now called the National Life Building, and known as numbers 157 to 163 La Salle street, in the city of Chicago, in Cook County, Illinois, on Thursday, the first (1st) day of May, A. D. 1879 (one thousand eight hundred and

seventy-nine), at eleven (11) o'clock in the forenoon of the said last-mentioned day, the premises and property in the said decree mentioned and described as follows, to wit:

All the right, title, interest and equity of redemption of the said Chicago and Pacific Railroad Company, or of John M. Whitman, receiver, or of any of the said defendants, in and to all and singular the railroad of the said Chicago and Pacific Railroad, as the same is now surveyed, laid out, and constructed, extending from Chicago avenue, in the city of Chicago, in said State of Illinos, to the town of Byron, in Ogle County, in said State, a distance of 88 miles, including the road-bed, stations or
138 station-houses, depot grounds, rails, ties, fences, bridges, viaducts and culverts, and all other buildings and structures, as well as engine-houses and machine and other shops used in connection with said railway, and all the machinery and tools and fixtures therein, and also all franchises connected with or relating to the construction, maintenance, or use of the said railway, together with the right or franchise of extending, constructing, maintaining, and operating a railroad from said town of Byron, westward to the city of Savanna, on the Mississippi River, vested in said railroad company by the act incorporating the same, as well as all other rights, privileges, and franchises belonging to the said railroad company; also all the supplies, materials, tools, personal property, fixtures, and appurtenances belonging to, or in anywise connected with or appurtenant to the said road; also, all the rolling stock, locomotives, and tenders, passenger, freight, and stock and milk cars of and belonging to said road, or purchased by the said receiver, which said rolling stock consists of the following items, viz, 60 box cars, 1 refrigerator car, 50 flat cars, 30 stock cars, 3 way cars, 1 caboose car, 4 passenger cars, 1 passenger and baggage car, 2 baggage cars, 3 milk cars, 20 hand cars (more or less), 7 locomotives and tenders.

The said sale to be made without prejudice to the following mortgages on portions of said depot grounds, which mortgages and the amounts thereby secured are prior liens to the mortgages foreclosed in the
139 said suit as to the property in the said mortgages respectively described, but are not a lien upon any other property:

A mortgage or trust-deed, dated August 6, 1872, and recorded in Cook County registry, in book 156 of records, page 166, September 5, 1872, executed by Thomas S. Dobbins to John A. Yale to secure the sum of $21,000 and interest at eight per cent., conveying lots one (1) to eight (8) being all of block 79 of Elston's addition to Chicago.

A mortgage, dated February 1, 1872, and recorded in Cook County registry, September 5, 1872, in book 149, p. 419, executed by Thomas S. Dobbins to John A. Yale, to secure the sum of $59,419.92, with interest at seven per cent., conveying lots two (2), three (3), and four (4) in block 80, and lots one to ten inclusive, and lots fourteen to twenty-three inclusive, in block eighty-one, in Elston's addition to Chicago.

Also a trust-deed from Thomas S. Dobbins to Albert L. Coe, dated May 12, 1873, and recorded July 8, 1873, to secure $15,750 and interest at 8 per cent., conveying lot three (3) in block 8, in Sheffield's addition to Chicago.

Also a trust-deed dated February 1, 1872, from Thomas S. Dobbins to

Mahlon D. Ogden, trustee of Chicago Land Company, recorded May 12, 1873, to secure $67,000 and interest at seven per cent., conveying block 83, and lots 5, 6, 7, 8, 9, and 10 in block 80, all in Elston's addition to Chicago.

The sum of sixty thousand dollars ($60,000) shall be paid in cash
140 at the time of sale and the balance as provided in the said decree, to which for more specific information in regard to the terms of sale and the property reference may be had.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, April 7, A. D. 1879.

E. C. & W. C. LARNED and
GEORGE W. SMITH,
Solicitors for Complainants.

This certifies that a notice of master's sale, of which the annexed printed slip is a true copy, was published for twenty-two successive days, to wit, daily six times in each week for three successive weeks preceeding the day of sale, to wit, twenty-two times in the daily edition of the Inter-Ocean, exclusive of Sundays, a newspaper published and printed in the city of Chicago, of general circulation throughout Cook County and the State of Illinois; that the date of the first paper containing the same was the 7th day of April, A. D. 1879; that the date of the last paper containing the same was the 1st day of May, A. D. 1879, and that we have received one hundred and fifty-two and $\frac{51}{100}$ dollars for publishing the same.

Dated at Chicago this 1st day of May, 1879.

WM. PENN NIXON, *Publisher.*

141 (Endorsed:) Filed May 6, 1879. W. H. Bradley, cl'k.

United States circuit court, northern district of Illinois, June 7, A. D. 1879.

Present: Hon. Henry W. Blodgett, district judge.

142 JOHN I. BLAIR ET AL.
vs.
THE CHICAGO AND PACIFIC RAILROAD COMPANY et al. } In chancery.

Come now the complainants, by their solicitors, and come also the exceptants, Alline P. Woodworth, and Thomas S. Dobbins, The Chicago and Pacific Railroad Company, Charles D. F. Smith, by their solicitors, and the court overrules the motion of said complainants to strike from the files the exceptions coming on to be heard, the court overrules all of such exceptions and confirms the said master's report of sale, and in all things approves and confirms the said sale, but orders that the master do not give a certificate of sale to the purchaser until the further order of this court.

And thereupon, in open court, the said Alline P. Woodworth, Thomas

S. Dobbins, pray an appeal to the Supreme Court of the United States from such decree and order of confirmation, and ask the court to fix the amount of bond to act as a supersedeas to such decree of confirmation, and also the amount of a cost bond.

And said Chicago and Pacific Railroad Company and Charles
143 D. F. Smith also in open court pray an appeal to the Supreme Court of the United States from such decree and order of confirmation, and ask the court to fix the amount of a cost bond.

And upon motion of the solicitors for complainants it is further ordered that the receiver remain in possession of said railroad property and continue to operate the same until the further order of this court.

United States circuit court, northern district of Illinois, Friday, April 9, A. D. 1880.

Present: Hon. Henry W. Blodgett, district judge.

144 JOHN J. BLAIR ET AL.
vs.
THE CHICAGO AND PACIFIC RAILROAD COMPANY et al. } In chancery.

It appearing to the court that the said Chicago and Pacific Railroad Company for the purpose of redeeming all and singular its property sold by Henry W. Bishop, one of the masters of this court, on the first day of May, A. D. 1879, under a decree entered in said cause on the twelfth day of February, A. D. 1879, to John I. Blair, Edwin F. Hatfield, jr., and William Bayard Cutting, for the sum of nine hundred and sixteen thousand and one hundred dollars ($916,100.00) did upon the ninth day of April, instant, pay to the clerk of this court for the use of said purchasers the said Blair, Hatfield, and Cutting said sum of nine hundred and sixteen thousand one hundred dollars ($916,100.00) in lawful money, together with ten per cent. interest on said sum from said first day of May, A. D. 1879, and also one per cent. commission, amounting in the aggregate to one million twelve thousand three hundred and ninety-two dollars and eighty five cents ($1,012,392.85), as provided by the terms of
145 said decree and as by the statutes of the State of Illinois and the rules of this court in such case made and provided.

It is therefore found that said defendant The Chicago and Pacific Railroad Company has on its part done what appears to be needful to effect a redemption from such sale, but the court reserves for further consideration the time and terms on which it will direct the delivery of the said property to the said company.

United States circuit court, northern district of Illinois, Thursday, January 9, A. D. 1880.

Present, Hon. Thomas Drummond, judge.

146 JOHN I. BLAIR, LACKAWANNA IRON and Coal Company, Delaware, Lackawanna and Western Railroad Company et al.
vs.
THE CHICAGO AND PACIFIC RAILROAD Company et al. } In chancery.

And now, on this day come Alline P. Woodworth and Thomas S. Dobbins, by their counsel, Henry Crawford, esq., and move the court that the appeal which they had prayed from the order of the court of the seventh day of June, A. D. 1879, confirming the report of the master's sale should be allowed and made a supersedeas on the said order by virtue of a bond in the penal sum of one hundred and fifty thousand dollars given by George A. Robbins and Francis Bacon, as sureties, and filed in court on the nineteenth day of June, A. D. 1879, which motion is overruled; but it is ordered by the court that there shall be retained out of the moneys paid into court heretofore or to be paid into court hereafter by the purchasers under the sale by the master, a sum sufficient to answer whatever may be due on the claim set forth in the petition of Alline P. Woodworth and John A. Yale, provided the Supreme Court of the United States
147 should decide that the order of the court dismissing the petition was erroneous and shall hold on the appeal which has been taken by the said Alline P. Woodworth, that she is entitled, out of any fund arising from the operation of the road or from sale of the property, to the payment of the whole or any part of her claim.

148, 149 United States circuit court, northern district of Illinois.

THE LACKAWANA IRON AND COAL COMPANY, The National City Bank of the city of New York, Moses Taylor, and John I. Blair
v.
THE CHICAGO AND PACIFIC RAILROAD Company, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox. } In chancery.

JOHN I. BLAIR, THE LACKAWANA IRON AND Coal Company, The Delaware, Lackawana and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased,
v.
THE CHICAGO AND PACIFIC RAILROAD Company, Thomas S. Dobbins, George S. Bowen, et al. } In chancery.

150 Circuit court of the United States, northern district of Illinois, ss.

THE LACKAWANA IRON AND COAL COMPANY
v.
THE CHICAGO AND PACIFIC RAILROAD COMPANY. } In chancery.

The intervening petition of Alline P. Woodworth and John A. Yale.

Your petitioners would respectfully show unto your honor that for a long time prior to the 1st day of February, 1872, your petitioner Alline P. Woodworth was the owner of certain real estate situated in the city of Chicago, and particularly described as follows: Lots one (1), two (2), three (3), four (4), of block eighty (80); and also lots one (1) to ten (10) inclusive, and also lots fourteen (14) to twenty-three (23) inclusive, in block 81 of Elston's addition to Chicago.

Your petitioners would further show that prior to said time Thomas S. Dobbins, the president of the said Chicago and Pacific Railroad Company entered into negotiations with your petitioner Alline P. Woodworth and her agent for the purchase of said real estate for the use and ben-
151 efit of the Chicago and Pacific Railroad Company, and represented to your petitioners that the property was to be employed permanently for the terminal facilities in the city of Chicago for the said railroad company. And your petitioners show unto your honor that your petitioner Alline P. Woodworth owned in the vicinity of the property described a large amount of other real estate, and it was represented to your petitioners that in case of the purchase by the said railroad company of the said described premises and the occupation of the same by the railroad company, and the use thereof for such terminal facilities of the said railroad company in the city of Chicago, the adjoining or neighboring property would be largely enhanced in value thereby.

Your petitioners further show that the said negotiations finally resulted in the purchase of the said described property by the said railroad company from your petitioner Alline P. Woodworth for the consideration hereinafter named, and by deed dated Feb'y 1, 1872, the said property was conveyed by your petitioner Alline P. Woodworth to Thomas S. Dobbins at the request of the said railroad company, and for its use and benefit; and your petitioners show that the consideration for the said property so conveyed was $58,243.80, and the agreement on the part of the said railroad company to occupy and use the said premises for its terminal facilities in the city of Chicago; the payment of the said
152 purchase-price was arranged for in the manner following, to wit: $5,824.40 in cash, and the balance to be secured by ten promissory notes of the said Thomas S. Dobbins for the sum of $5,241.94 each, payable respectively in 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 years after February 1, 1872, with interest at the rate of 7 per cent. per annum, payable semi-annually.

The said notes to be secured by deed of trust of the said property to your petitioner John A. Yale; and your petitioners show that the said $5,824.40 in cash was paid by said railroad company, and the notes and deed of trust duly executed and delivered to your petitioner, which said

deed of trust was duly recorded in Cook County, on the 5th day of September, 1872.

Your petitioners further show unto your honor that the said railroad company entered upon the said lands, and laid thereon a large number of tracks and other conveniences for its use and benefit, and continued to use and occupy the said land up to the time of the appointment of the receiver for said railroad company in the above entitled cause.

Your petitioners would further show unto your honors that the said railroad company paid the said promissory note maturing on Feb'y 1, 1873, and the interest thereon and the semi-annual interest on the nine remaining notes falling due August 1, 1872, February 1, 1873, August 1, 1873, February 1, 1874, and Aug. 1, 1874.

153 Your petitioners would further show unto your honor that on the day of , 187 , the above-entitled cause was instituted in this court, and that on the 27th day of May, 1876, an order was entered in said cause appointing John H. Whitman receiver for the said railroad company, directing him to take possession of the railroad of said company and the rolling stock and other property, and carry on the business of the said railroad company, and your petitioners show that the said receiver has ever since been in the possession and management of the said railroad and in the possession and user of the said real estate by your petitioner Alline P. Woodworth so conveyed to the said Thomas S. Dobbins, for the use and benefit of said railroad company.

And your petitioners show unto your honors that the said receiver has not only used the said real estate for the terminal facilities of the said railroad in Chicago, but has also derived profit or income from the same for his trust by leasing portions of the said property and receiving rent therefor.

Your petitioners show unto your honors that the said receiver has occupied and used the said premises continuously since his appointment, yet he has neglected to pay the said notes which are now all due, given as aforesaid for part of the purchase-price for said real estate, and

154 has neglected to pay the interest maturing semi-annually on the same.

Your petitioner shows that the said real estate is necessary to the conduct of the business of said railroad; that the receiver has recognized the said purchase by continuing to occupy the said land and drawing profit therefrom as aforesaid.

In consideration whereof and in consideration of all the foregoing, your petitioners pray that this honorable court may direct the receiver to pay to your petitioners the amount due upon said notes, according to the tenor and effect thereof, out of any funds in his hands not otherwise appropriated, or that by proper provision in any decree to be rendered in this cause, charging the proceeds of any sale directing by said decree with the payment of the said notes according to the tenor and effect thereof.

And your petitioner, will ever pray, &c.

ALLINE P. WOODWORTH,
JOHN A. YALE,
By CRAWFORD AND McCONNELL,
Their Solicitors.

United States circuit court, northern district of Illinois, ss.

THE LACKAWANA IRON AND COAL COMPANY et al.
v.
THE CHICAGO AND PACIFIC RAILROAD COMPANY.

155 STATE OF ILLINOIS,
County of Cook, ss:

John A. Yale, being duly sworn, on his oath says that he has read the foregoing petition and knows the contents thereof, and verily believes the matters and things stated in said petition to be true.

JOHN A. YALE.

Subscribed and sworn to before me this 23rd day of March, A. D. 1878.
[SEAL.] WILLIAM STRONG,
Notary Public.

(Endorsed:) Filed March 25, 1878. Wm. H. Bradley, c'l'k.

156 United States circuit court, northern district of Illinois.

MONDAY, *March* 25, A. D. 1878.

Present: Hon. Henry W. Blodgett, district judge.

THE LACKAWANNA IRON AND COAL COMPANY
v.
THE CHICAGO AND PACIFIC RAILROAD COMPANY et al. } In chancery.

On motion leave is given Alline P. Woodworth and John A. Yale, and also to Samuel H. Robbins and John A. Yale, to file their intervening petitions herein, and thereupon it is ordered by the court that the same be referred to Henry W. Bishop, esq., the master in chancery of this court, to examine and report thereon to the court.

157 In the circuit court of the United States for the northern district of Illinois.

THE LACKAWANA IRON AND COAL COMPANY
v.
THE CHICAGO AND PACIFIC RAILROAD COMPANY. } In chancery.

In the matter of the intervening petition of Alline P. Woodworth and John A. Yale.

Master's report.

To the honorable the judges of said court:

I, Henry W. Bishop, master in chancery of said court, to whom by an

order entered herein the above-entitled petition was referred for examination and report, hereby report that upon such reference I have been attended by Mr. Henry Crawford, counsel for the petitioners, and by Messrs. Larned, counsel for the defendant, and by John A. Yale and Thomas S. Dobbins, witnesses on behalf of the petitioners, and by J. Henry Eoff and J. M. Whitman, witnesses introduced on the part of the defendant. Their testimony was duly taken, is hereto attached, and made a part hereof. In behalf of the petitioners there were introduced certified copies of the trust-deed, and notes secured by the same referred to in the petition, and
158 also a plat which is admitted to be a correct representation of the property involved in this proceeding.

From an examination of the testimony taken in this case, and the exhibits admitted in connection therewith, I am satisfied that the material allegations in the petition are sustained by the proofs and that there is due to the petitioners upon the notes secured by said trust-deed to June 8, 1878, fifty-nine thousand nine hundred and ten $\frac{10}{100}$ (859,910.10) dollars, for the payment of which I respectfully recommend that an order be entered.

By stipulation between counsel the evidence taken in the petition of Robbins and Yale is to be considered as taken in this petition.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

CHICAGO, *July* 11th, A. D. 1878.

(Endorsed:) Filed July 11, A. D. 1878. Wm. H. Bradley, clerk.

159 Circuit court of the United States for the northern district of Illinois.

THE LACKAWANA IRON AND COAL CO. AND others
vs.
THE CHICAGO AND PACIFIC RAILROAD COMPANY. } In chancery.

In the matter of the intervening petitions of Robbins and Yale, Aline P. Woodworth, John A. Yale, George B. Carpenter, Albert L. Coe.

The solicitors for the complainants in the above-entitled suit object to any order being entered in said suit to pay any amount found to be due to the complainants respectively, upon the notes proved in evidence before the master, out of any funds in the hands of the receiver of the Chicago and Pacific Railroad Company or out of the proceeds of any sale directed to be made by this court of the property of said railroad company.

E. C. AND W. C. LARNED,
Solicitors for Complainants in s'd Suit.

(Endorsed:) Filed Nov. 30, 1878. Wm. H. Bradley, cl'k.

160 United States circuit court, northern district of Illinois.

SATURDAY, *April* 19, *A. D.* 1879.

Present: Hon. Henry W. Blodgett, district judge.

THE LACKAWANNA IRON AND COAL COMPANY, The National City Bank of the city of New York, Moses Taylor, and John I. Blair,
vs.
THE CHICAGO AND PACIFIC RAILROAD COMPANY, Thomas S. Dobbins, George S. Bowen, and John S. Wilcox. } In chancery.

In the matter of the intervening petition of John A. Yale and Alline P. Woodworth.

And now upon this day come the said intervening petitioners, by their solicitor, Henry Crawford, and the said John M. Whitman, receiver, by his solicitors, E. C. and W. C. Larned, and the court having heard argument and being fully advised in the premises, it is ordered, adjudged, and decreed that the said intervening petition be dismissed without prejudice, at the costs of the said petitioners.

161 In the circuit court of the United States for the northern district of Illinois.

JOHN I. BLAIR AND OTHERS
v.
THE CHICAGO AND PACIFIC RAILROAD COMPANY AND OTHERS. } In chancery.

The exceptions of Alline P. Woodworth, George B. Carpenter, Albert L. Coe, Samuel H. Robbins, and John A. Yale, intervenors in the above-entitled suit, to the substance of the decree of foreclosure and sale entered herein.

These exceptants object to the enrollment of the proposed decree of foreclosure and sale on the above-entitled action, and for causes of exceptions assign:

First. These exceptants have duly filed their intervening petitions in the above suit praying for the establishment and enforcement of a first and paramount lien upon certain property of the said defendant railroad company; that such proceedings were afterwards had upon their said petitions that the master in chancery of this court made and filed his report allowing the equities of said petitions on the 16th day of July, A. D. 1878, and no exception was filed within the rules of court, and the said master's report stands confirmed in all respects, and to the same extent as though an order of confirmation had been entered by this court upon said master's report.

162 Second. These exceptants further show to the court that the said proposed decree is erroneous and defective in that it fails to provide for the payment of these exceptants' first and paramount liens against

the property of the said defendant railroad company herein out of the sale proceeds.

Third. Said decree is further erroneous in that it does not provide for the due enforcement of these exceptant' paramount liens.

Fourth. Said decree is erroneous because it provides for the payment to the owners of the corporate bonds before payment of the prior liens of exceptants.

Fifth. These exceptants further show to the court that the said decree is erroneous in so far as it confers authority on the master of this court to receive from the purchaser for the balance of the excepted bid, in lieu of cash, any of the outstanding and unpaid bonds or coupons issued under and secured by said mortgages, at such percentage of the face value thereof as this court shall hereafter direct, instead of adjudging a full cash payment.

Sixth. These exceptants further show to the court that the said decree is erroneous for indefiniteness and uncertainty in that it reserves upon this court the power of decreeing the payment of a further amount in cash by the purchasers at such sale as may be necessary to pay all liens ad-
163 judged by the court to be prior to the heirs of said mortgages out of the proceeds of such sale, instead of decreeing a cash sale or settling the equities of all parties before any decree or sale.

Seventh. These exceptants further show to the court that the said decree is erroneous in that it constrains the receiver herein, upon affirmance of such sale, to surrender and transfer the possession of all and singular the railroad property of said defendant herein, including the real property described in said master's report, without in any way paying exceptants' claims there'.

Eighth. These exceptants further show to the court that said decree is defective and erroneous because it does not require a sale for cash, and transfer the equities of all parties to the fund arising from proceeds of sale.

HENRY CRAWFORD,
Solicitor for said Intervenors.

(Endorsed:) Filed Dec. 18, 1878. Wm. H. Bradley, cl'k.

164 United States circuit court, northern district of Illinois.

MONDAY, *April* 14, *A. D.* 1879.

Present: Hon. Henry W. Blodgett, district judge.

JOHN I. BLAIR ET AL.
v.
THE CHICAGO AND PACIFC RAILROAD COMPANY ET AL. } In chancery.

Now, on this fourteenth day of April, A. D. 1879, comes Alline P. Woodworth into open court and prays an appeal to the Supreme Court of the United States from the final decree of foreclosure and sale herein entered on the twelfth day of February, A. D. 1879.

165 United States circuit court, northern district of Illinois.

MONDAY, *April* 14, *A. D.* 1879.

Present: Hon. Henry W. Blodgett, district judge.

JOHN I. BLAIR ET AL.
v.
THE CHICAGO AND PACIFIC RAILROAD COMPANY ET AL. } In chancery.

Now come the parties, by their solicitors, and said defendant, The Chicago and Pacific Railroad Company, by Mr. Smith, its solicitor, prays an appeal to the Supreme Court, and asks the court to fix the amount of the appeal bond to be given in order to make such appeal a supersedeas. It is thereupon ordered that said appeal be allowed and that the same be made a supersedeas on condition that said defendant, file a bond, conditioned as required by law, in the penal sum of one hundred and fifty thousand dollars, with sureties to be approved by the court, and that on the filing of such bond said appeal operate as a supersedeas; and the said defendant thereupon, by its said attorney announced, its inability to give such bond; and thereupon said defendants, The Chicago and Pacific Railroad
166 Company, Ezra May, Andrew C. Hawkins, and Seneca Kimbark prayed an appeal, and asked the court to fix the penalty of an appeal bond on condition that said appeal should not operate as a supersedeas; and the court, being fully advised in the premises, doth order that said appeal, not to operate as a supersedeas, be allowed on the filing of an appeal bond by said defendants, conditioned as required by law, in the penal sum of one thousand dollars, with surety to be approved by the court.

167 United States circuit court, northern district of Illinois.

SATURDAY, *April* 19, *A. D.* 1879.

Present: Hon. W. Blodgett, district judge.

JOHN I. BLAIR ET AL.
v.
THE CHICAGO AND PACIFIC RAILWAY COMPANY ET AL. } In chancery.

Now on this day come the said complainants, by their solicitors, and also comes Alline P. Woodworth, by Henry Crawford, her solicitor, and the court being now fully advised, on the motion of said Woodworth, entered on the fourteenth day of April instant, for an appeal herein, doth order and decree that said appeal be allowed from so much and such parts of the foreclosure decree entered herein on the twelfth day of February last as affects the interests of said Woodworth, that is to say, the order that the sale of said railroad, its property and franchises, be made without prejudice to the mortgage dated February first, A. D. eighteen hundred and seventy-two, recorded in the Cook County registry, in book 149, page 419, executed by Thomas Dobbins to John A. Yale, to secure the sum
168 of fifty-two thousand four hundred and nineteen dollars and ninety-

two cents ($52,419.92), with interest at seven per cent., conveying lots 2, 3, and 4, in block 80, and lots 1 to 10, inclusive, and lots 14 to 23, inclusive, in block 81 in Elston's addition to Chicago, on condition that said Woodworth shall enter into bond in the penal sum of ten thousand dollars, conditioned as required by law, said bond to be filed within sixty (60) days from the entry of said foreclosure decree, excluding Sundays.

But said appeal shall not be deemed to operate as a supersedeas to the sale of said mortgaged property under said decree, nor in any way to delay said sale, but only to operate to delay the distribution of the proceeds of such sale to the amount to fully secure the amount due on said mortgage from Dobbins and Yale.

And thereupon said Woodworth, by her solicitor, excepts to so much of this order as limits the operation of said appeal, and tenders an appeal bond in the penal sum of one hundred and fifty thousand dollars ($150,000.00), and insists that said appeal shall be made a full supersedeas to the operation of said decree, in accordance with her said motion of the fourteenth day of April instant.

169 Circuit court of the United States, northern district of Illinois.

JOHN I. BLAIR, THE LACKAWANA IRON AND COAL COMPANY, The Delaware, Lackawana and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased,
v.
THE CHICAGO AND PACIFIC RAILROAD COMPANY, Thomas S. Dobbins, George S. Bowen, and others.

Know all men by these presents that we, Alline P. Woodworth, as principal, and George A. Robbins, as sureties, are held and firmly bound unto John I. Blair, the Lackawana Iron and Coal Company, the Delaware, Lackawana and Western Railroad Company, Elizabeth McEvers Bayard, deceased, in the full and just sum of one hundred and fifty thousand dollars, lawful money of the United States, to be paid to the said John I. Blair, the Lackawana Iron and Coal Company, the Delaware, Lackawana and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased, their executors, administrators, or assigns, to which payment well and truly to be made
170 we bind our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this eight' day of April, A. D. 1879.

The condition of the above obligation is such that whereas lately at a term of the circuit court of the United States for the northern district of Illinois, in a certain suit in equity depending in said court wherein John I. Blair, the Lackawana Iron and Coal Company, the Delaware, Lackawana and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased, are complainants, and the Chicago and Pacific Railroad Company and others are defendants, and the said Alline P. Woodworth is intervenor, a certain final decree was rendered and enrolled by said court on February 12, A. D. 1879, order-

ing the sale of said Chicago and Pacific Railroad, and certain distribution of the proceeds of such sale, from which said final decree of sale and distribution said Alline P. Woodworth prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Alline P. Woodworth shall duly prosecute her said appeal with effect, and answer all damages and costs if she fails to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

171 ALLINE P. WOODWORTH, [SEAL.]
By GEORGE A. ROBBINS,
Her Attorney in Fact.
GEORGE A. ROBBINS. [SEAL.]

Signed, sealed, and delivered in the presence of JOHN A. SHIELDS, this 17' day of Ap'l, 1879, as to George A. Robbins as attorney in fact for Alline P. Woodworth and also for George A. Robbins as surety.

U. S. OF AMERICA,
Southern District of New York:

George A. Robbins, on oath, says that he is a citizen and resident of New York City, and is worth the full sum of three hundred thousand dollars over and above all his just debts and liabilities.

GEORGE A. ROBBINS.

Subscribed and sworn to before me this seventeenth day of April, A. D. 1879.

[SEAL.] JOHN A. SHIELDS,
U. S. Com'r So. D't N. Y.

I hereby certify that in my judgment the above-named surety, Geo. A. Robbins, is amply sufficient to answer the penalty of the said appeal bond for one hundred and fifty thousand dollars, my said judgment being
172 founded on the foregoing affidavit.

SAM'L BLATCHFORD,
Circuit Judge.

NEW YORK, *April 17th*, 1879.

This bond was this day tendered to me by the solicitor of Alline P. Woodworth and a request made that I approve the same and allow an appeal and full supersedeas of the decree therein recited, but I refused to approve this bond and make said appeal operate as a full supersedeas, but have allowed said appeal to operate as a limited supersedeas, as per order this day entered. The complainants' counsel also object to this bond on the ground that they are advised the surety is not sufficient, and because no power of attorney to Robbins to sign the bond as attorney in fact for Alline P. Woodworth is filed or shown.

Dated this 19th day of April, A. D. 1879.

H. W. BLODGETT, *Judge.*

173 NORTHERN DISTRICT OF ILLINOIS, *set:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be true and

complete copies of the intervening petition of Alline P. Woodworth and John A. Yale, filed March 25, A. D. 1878; of the order of court entered of record March 25, 1878; of the master's report, filed July 11, A. D. 1878; of the exceptions of complainants to said report, filed November 30, A. D. 1878, and of the order of court entered of record April 19, A. D. 1879, in the cause wherein The Lackawana Iron and Coal Company et al. are the complainants and The Chicago & Pacific Railroad Company et al. are the defendants. Also of the exceptions of Alline P. Woodworth et al., filed December 18, A. D. 1878; of the order of court entered of record April 14, A. D. 1879; of another order of court entered of record on the same day; of the order of court entered of record April 19, A. D. 1879, in the cause wherein John I. Blair et al. are the complainants and The Chicago and Pacific Railroad Company et al. are the defendants, as appears from the files and records of said court now remaining in my custody and control. Also a bond, with the endorsements on the same, tendered
174 as an appeal bond in said cause of Alline P. Woodworth, as principal, and George A. Robbins, as surety, but not filed in or approved by said court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 25th day of April, A. D. 1879, and of our Independence the one hundred and third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

175 Circuit court of the United States, northern district of Illinois.

JOHN I. BLAIR, THE LACKAWANNA IRON & Coal Company, The Delaware, Lackawanna & Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased,

against

THE CHICAGO & PACIFIC RAILROAD COMPANY, Thomas S. Dobbins, George S. Bowen, and others.

Know all men by these presents that we, Alline P. Woodworth, as principal, and Henry Crawford, Perry H. Smith, jr., as sureties, are held and firmly bound unto John I. Blair, the Lackawanna Iron and Coal Company, the Delaware, Lackawanna & Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased, in the full and just sum of one thousand dollars, lawful money of the United States, to be paid to the said John I. Blair, the Lackawanna Iron and Coal Company, the Delaware, Lackawanna and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased, their executors, administrators,
176 or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this day of May, A. D. 1879.

The condition of the above obligation is such that whereas lately at a term of the circuit court of the United States for the northern district of

Illinois, in a certain suit in equity depending in said court wherein John I. Blair, the Lackawanna Iron and Coal Company, the Delaware, Lackawanna and Western Railroad Company, Elizabeth McEvers Bayard, sole executrix and legatee of Robert Bayard, deceased, are complainants, and The Chicago & Pacific Railroad Company and others are defendants, and the said Alline P. Woodworth is intervenor, a certain final decree was rendered and enrolled by said court on February 12, A. D. 1879, ordering the sale of said Chicago and Pacific Railroad, from which said final decree of sale said Alline P. Woodworth prayed for and obtained an appeal to the Supreme Court of the United States:

Now, therefore, if the said Alline P. Woodworth shall duly prosecute her said appeal with effect, and answer all costs if she fails to make
177 her plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY CRAWFORD. [SEAL.]
PERRY H. SMITH, JR. [SEAL.]

The above bond is approved, with the special understanding that it is not to operate as a supersedeas, or in any way delay the execution of the decree.

Dated this 28th May, 1879.

H. W. BLODGETT, *Judge.*

(Endorsed:) Filed May 28, 1879. Wm. H. Bradley, clerk.

178 NORTHERN DISTRICT OF ILLINOIS, *set:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be true, correct, and complete transcripts of the bill of complaint, filed January 15, A. D. 1877; of the answer of the Chicago and Pacific Railroad Company, filed ; of the answer of Thomas S. Dobbins et al., filed ; of the replication of complainants to answer of Thomas S. Dobbins et al., and of the replication of complainants to the answer of the Chicago and Pacific Railroad Company, both filed May 5, A. D. 1877; of the exceptions to the decree by Alvine P. Woodworth et al., filed December 18, A. D. 1878; of the exceptions to the decree by the Chicago and Pacific Railroad Company, filed December 28, A. D. 1878; of the order of court entered of record December 22, A. D. 1879; of the decree entered of record February 12, A. D. 1879; of the master's report of sale, filed May 6, A. D. 1879; of the order of court entered of record June 7, A. D. 1879; of the order of court entered of record April 9, A. D. 1880; of the order of court entered of record January 9, A. D. 1880; and of the transcript of record in the cause of the Lackawana Iron and Coal Company et al., v. The Chicago and Pacific Railroad Company et al.; to which is attached the certificate of the clerk of the circuit court of the United States for the northern district of Illinois, dated April 25,
A. D. 1879, and of the bond in appeal, filed May 28, A. D. 1879,
179 in the cause wherein John I. Blair et al. are the complainants and The Chicago and Pacific Railroad Company et al. are the defendants, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 15th day of October, A. D. 1880, and of our Independence the 105th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsement on cover:) No. 173. Alline P. Woodworth, appellant, vs. John I. Blair, The Delaware, Lackawana and Western Railroad Company, et al. N. Illinois C. C. U. S. Filed 23rd October, 1880.

12-8

Supreme Court of the United States,

OCTOBER TERM, A. D. 1883.

No. 173.

ALLINE P. WOODWORTH ET AL.

vs.

JOHN I. BLAIR ET AL.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Statement and Brief for Appellant.

HENRY CRAWFORD,
SOLICITOR.

Beach, Barnard & Co., Legal Printers, 104 Randolph Street, Chicago.

Supreme Court of the United States,

OCTOBER TERM, A. D. 1883.

No. 173.

ALLINE P. WOODWORTH ET AL.

vs.

JOHN I. BLAIR ET AL.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

Statement and Brief for Appellant.

On May 27, 1876, John I. Blair and the other appellees, claiming to be bond creditors of the Chicago and Pacific Railroad Company, filed a bill in the Circuit court, asking for the appointment of a receiver. On the same day a receiver was appointed and took possession. Afterwards, on January 15, 1877, the same parties filed a bill in the same court against the railroad company and divers creditors, praying the foreclosure of a general mortgage upon the entire line of railway to secure the payment of the bonds and coupons held by complainants.

The administration of the sequestered property was conducted principally by decrees entered in the receivership cause until December 22, 1879, when the two actions were ordered to be consolidated. (Trans., p. 82, fol. 106.)

On March 25, 1878, the appellant, Alline P. Woodworth and John A. Yale, trustee, filed an intervening petition in the cause. (Trans., p. 101, fol. 150-156.)

It alleged, that prior to February, 1872, the petitioner, Woodworth, was the owner of lots 1, 2, 3 and 4 in Block 80, and lots 1 to 10 inclusive, and lots 14 to 23 inclusive, in block 81 of Elston's addition to Chicago; that the Chicago and Pacific Railroad Company purchased the property for depot and freight grounds, taking title in the name of its president, Thomas S. Dobbins as trustee; the consideration agreed to be paid therefor was $58,243.80, of which $5,824.40 was paid in cash, and ten notes of $5,241.94 and interest, payable in 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 years, were executed by the president and secured by a trust deed on the property, executed to John A. Yale; this deed of trust was duly recorded September 5, 1872.

The railroad company entered into possession of the premises, laid its tracks thereon and used the same as its station grounds in Chicago up to the appointment of the receiver, who ever since has been in the use thereof, all of which was necessary to enable him to properly conduct the business of the railroad.

The note due in 1873 was paid, and interest on the remaining nine notes was paid up to August 1, 1874. The remainder of the purchase money was unpaid.

The prayer was for an order on the receiver to pay the unpaid notes and interest according to their tenor or

by proper provision in the final decree to charge the proceeds of sale with the payment of such purchase money obligation.

This petition was referred to the master to examine and report. (Trans., p. 103, fol. 156.)

July 11, 1878, the master filed his report stating that the material allegations of the petition had been sustained by the proofs, and that an order should be entered for the payment of $59,910.10. (Trans., p. 104, fol. 157.)

In the meanwhile the main foreclosure cause was being pressed to final decree, and a draft of the same was submitted for the action of the court wherein the appellant's demand, although allowed by the master, was left without any provision for payment.

By leave of court the appellant on December 18th filed exceptions to the proposed foreclosure decree. (Trans., p. 79, fol. 101.) These claimed in substance that the debt and equity of the intervening petitioner had been fully established by the master's report in July and no exception had ever been taken thereto and that the decree was erroneous in not making provision for the payment of such paramount lien out of the sale proceeds prior to the claims of the general bond creditors.

On February 12, 1879, the court overruled these exceptions, and entered a final decree of foreclosure and sale. (Trans., p. 82, fol. 107.) It contained findings as to the number of bonds held by complainants and others and the sum due thereon; that $160,000 of receiver's certificates were outstanding and constituted a first lien on all the property, real and personal, of the said railroad company.

It ordered the mortgagor corporation to pay the

amounts due on the mortgage bonds and certificates by February 24, 1879, or the master should sell the entire railroad with its appurtenances and franchises as "one "property and not separate parcels."

Sixty thousand dollars of the bid was to be cash; the remainder in receiver's certificates, and bonds and coupons; any purchaser would be obliged to pay such sums as might be ordered by the court, to pay all such claims as shall have been decreed to be prior to the mortgage lien, and ordered to be paid out of the sale proceeds. The monies remaining after costs and allowances were ordered to be paid: first, to liquidate the receiver's certificates; second, to such liens as had been decreed to be prior to the general mortgage; third, to the bondholders, and any remainder to the railroad company or such parties having liens or judgments as the court may direct.

The master was ordered on full compliance with the bid, to execute a certificate of purchase and after the period for redemption had expired, a deed. Thereupon the purchaser should be let into possession of the entire railway.

The property ordered to be sold was, "all and singular "the railroad of the Chicago and Pacific railroad as the "same is now surveyed, laid out and constructed, extend- "ing from Chicago avenue in the city of Chicago, in said "State of Illinois, to the town of Byron, in Ogle county in "said state, a distance of eighty-eight miles, including the "road bed, station or station houses, *depot grounds*, rails, "ties, &c., &c." "The said sale to be made without preju- "dice to the following mortgages on portions of said depot "grounds, which mortgages and the amounts thereby "secured, are prior liens to the said mortgages foreclosed

" in this suit, as to the property in the said mortgages re-
" spectively described, but are not a lien upon any other
" property; a mortgage dated February 1, 1872, and re-
" corded in Cook county registry September 5, 1872, in
" Book 149, page 419, executed by Thomas S. Dobbins
" to John A. Yale, to secure the sum of $52,419.92, with
" interest at seven per cent. conveying lots, one (1), two (2),
" three (3), and four (4), in block 80, and lots one to ten, inclu-
" sive, and lots fourteen to twenty-three, inclusive, in block
" eighty-one in Elston's addition to Chicago." (Trans., p. 91; fol. 127.)

The petitioners in open court prayed an appeal (Trans., p. 106, fol. 164). They tendered a bond to act as a supersedeas. (Trans., p. 108, fol. 169). This bond was approved by the court as a limited supersedeas, not to prevent or delay the sale, " but only to operate to delay
" the distribution of the proceeds of such sale to an
" amount to fully secure the amount due on said mort-
" gage from Dobbins to Yale." (Trans., p. 108, fol. 168.)

On May 1, 1879, the master reported the sale of the railway for $916,100 to John I. Blair, Edwin F. Hatfield and William Bayard Cutting, in accordance with the decree. (Trans., p. 92, fol. 128.)

On June 7, 1879, the court overruled the exceptions which were filed by the petitioner Woodworth to the master's report, and confirmed the sale. (Trans., p. 98, fol. 142.)

On April 9, 1880, the railroad company paid to the clerk of the court the sum of $1,012,392.85, being the amount of the bid, interest and commissions, as required by the decree and the statutes of Illinois. It was there-

upon decreed: "It is therefore found that said defend-
"ant, the Chicago and Pacific Railroad Company has,
"on its part, done what appears to be needful to effect a
"redemption from such sale, but the court reserves for
"future consideration the time and terms on which it will
"direct the delivery of said property to said company."
(Trans., p. 99, fol. 144.)

Assignment of Errors.

(1.) The Circuit court committed error in refusing to decree full payment of the petitioner's claim out of the proceeds of sale of the railway before payment to the bondholders.

(2.) In entering a decree, subject to the lien of petitioner, instead of enforcing and satisfying the same out of the sale proceeds.

(3.) In making full disposition of the proceeds of sale, and the title and possession of the railway, without enforcing in any way, the prior lien of the petitioner, which had been fully established in the cause.

There are no disputed facts in this appeal. The statement presents only questions of law for consideration. The appellees were holders of bonds secured by a general mortgage upon a railway. They instituted in their own names, two actions in equity; first, for the protection, and later on, for the enforcement of their security by the sale of the railway. These suits were afterwards consolidated. On the institution of the first action, the court appointed a receiver, who held possession of the whole property until after final decree and sale.

Pending the litigation, an intervening petition was filed by the appellant, claiming a purchase money lien upon a part of the depot grounds bought by the corporation, necessary for its use and in constant enjoyment by the receiver.

No objection was interposed, either by appellee or the company, to the reception or consideration of this petition.

No answer was ever filed, attempting in any way, to dispute or qualify its allegations.

The master made a report sustaining the claim as to priority and amount, and no exception was ever filed to the master's finding.

Instead of ordering the payment of a prior lien so uncontested and established, the court refused to grant the petitioner any effective relief whatever and entered a decree to sell the whole railway, including the depot grounds subject to the paramount lien of petitioner restricted to the lots originally bought; divided the entire sale proceeds among the bondholders and others, without paying anything on such a preferential claim and ordered

the judicial possession to be yielded directly to the purchaser thus compelling the petitioner to wait for an indefinite period and until the termination of the receivership and then enforce her rights by a direct litigation against the purchaser under the decree, or in case of a redemption from the sale within the period allowed by the decree, against the mortgagor corporation itself.

In thus refusing to adjudge and enforce the debt and lien of the appellant, both against the railroad company and the bondholders, the Circuit court committed error.

The ruling of the lower court was based upon the theory advanced by the original complainants, that being in effect junior mortgagees as respects the appellant's purchase money mortgage, they had the absolute right to foreclose only their own lien and sell the property subject to the elder lien, the enforcement of which would have to be postponed until after the complete determination of the pending action.

It is undoubtedly true that when the debt secured by a senior lien is not due and that creditor is not before the court, a junior incumbrancer may foreclose the equity of redemption as against his own lien, and leave the holder of the first incumbrance to enforce his rights when he is so disposed. The right to thus proceed and sell less than the whole title is restricted within narrow limits. It must be apparent from the bill that the junior mortgagee is not attempting to sell anything but the mere equity and that other creditors are content.

The law looks with disfavor on a multiplicity of suits, and refrains, wherever possible, from selling any property clogged with unknown conditions or liens. In all cases where the court holds possession by a receiver, of property subject to various and conflicting liens, the holders of

which are all parties, not only sound doctrine, but universal practice requires that the court should in the single action settle all questions of priority and amount, sell the property free of incumbrance, and appropriate the proceeds of sale according to the several priorities of those entitled. In all such cases the court will proceed to adjudicate the amount and preference of all liens on the property, irrespective of whether they are superior or inferior to the incumbrance of the original complainants, leaving the question of ultimate payment to be determined by the amount of the sale proceeds.

No case can be cited where a court of equity ever authorized a junior mortgage to restrict a foreclosure proceeding to the enforcement of his own lien, when a receiver had taken possession of the whole property and a senior mortgagee with a debt matured was a party to the suit.

Application of these general principles will clearly convict the decree below of error, and establish the equities of the appellant as against the railroad company and the bondholders.

First. As against the Chicago & Pacific Railroad Company, there can be no serious question as to appellant's rights. No answer was interposed by the corporation to her petition. The master's report finding that all the substantial allegations of the claim had been established, stands without exception and admitted.

Considering the question apart from the lien of any general mortgage upon the railway, it was the undoubted duty of a court having such a claim presented for enforcement to adjudge the amount found due by the master to be a just debt of the corporation and decree its payment

and in default, to order the enforcement of the lien for the unpaid purchase money.

Considering the peculiar nature of railway property the only proper method to enforce the lien, would be by the sale of the whole line, considered as one property, incapable of severance. Although purchased of the appellant as separate property, when this land was made an integral portion of the right of way and depot grounds of a constructed and actively operated line of railway, it lost its character as mere lots and became a necessary portion of the entire line, incapable of being dislocated and sold; consequently the purchase money lien must be treated as enforceable only against the whole railway which being a public highway can only be dealt with by the courts as a unit.

Mueller v. *Dows*, 94 U. S., 449.
Neilson v. *Iowa East. Ry.*, 44 Iowa, 71.

"In every respect, except this one of its construction, "the road is a unit, an entirety. Its route is selected and "surveyed as one road. It is owned and built and run by "one corporation. Its trains run over it all. It is not "easy to see how it can be held to be one road for pur- "poses of the mortgage, and two or three pieces of road "for the purpose of the mechanics' lien."

Brooks v. *Railway Co.*, 101 U. S., 443.
Meyer v. *Hornby*, 101 U. S., 728.

In a similar controversy where a purchase money lien existed on a portion of the right of way of a railroad, completed and operated, the Supreme court of Ohio expressly held that such a creditor could not have any remedy against the portion of the railway which he had originally sold, as the right of the public to preserve the highway

intact, was paramount to the right of the encumbrancer to sever it, and therefore the only proper relief was to order the sale of the entire road to satisfy the lien.

D., N. & B. R. R. v. *Lawton*, 20 Ohio S., 411.

Walker v. *Ware*, 12 Jur. N. S., pt. 1, p. 18.

These authorities, and the sound general principles on which they are founded, conclusively establish that as against the Chicago and Pacific Railroad Company the appellant had an unquestioned lien in equity on the entire railroad, springing out of the unpaid purchase money mortgage upon the depot grounds.

Second. As against the bondholders secured by the general mortgage, the appellant's superior equity is clear, considering their respective relations to the trust property either on the basis of the documents and transactions creating the two liens or from the unequivocal adoption of the purchase of the depot grounds by the bondholders.

(1.) The purchase money mortgage, of appellant, was recorded September 5, 1872, in the records of Cook County. The general mortgages under which the bondholders claim were executed as follows: The first was executed November 2, 1872, and recorded in Cook county February 25, 1873, and the deed of further assurance was executed November 6, 1874, and recorded November 7, 1874.

The complainants' rights as creditors of the railroad company holding its bonds as collateral to their respective demands, are very fully set out in the bill. (Trans., p. 8, fol. 10.)

From the recitals it appears the Lackawanna Iron and

Coal Company became the holder of 882 of such bonds on September 17, 1874; the Delaware, Lackawanna and Western Railroad Company became the holder of fifty-five of such bonds on September 29, 1874; John I. Blair became the holder of ninety of such bonds on September 1, 1874, and thirty more on October 27, 1875; Robert Bayard became the holder of 200 of such bonds on January 1, 1874, and 200 more prior to March 1, 1876; Moses Taylor became the holder of 150 of such bonds on September 15, 1874, and thereafter; the National City Bank became the holder of 120 of said bonds on September 12, 1874, and thereafter.

When the complainants, in the year 1874, thus acquired bonds issued under the general mortgage recorded in February, 1873, they were chargeable with full notice of the outstanding lien of the appellant under the trust deed to Yale, recorded in September, 1872.

They were also charged with notice of the actual condition and user of the property, viz: that the railroad company had entered into possession of the property, laid a large number of tracks thereon, and that the same had been thereby constituted such an inseparable portion of the whole line of an operated railroad as to entitle the appellant, in case of non-payment, to enforce a lien against the entire property.

If that was the exact relation between the appellant and the railroad company, it is plain that the bondholders have voluntarily accepted their claim, subordinated to the outstanding and prior equity of the appellant, and are in no better position than the corporation to deny the obligation of the entire property to answer to the paramount purchase money debt, subject to which they, with full knowledge, took their bonds.

The petitioning creditor is prior in time, and stronger in right.

The general mortgage "can only attach itself to such "property in the condition in which it comes into the "mortgagor's hands. If that property is already subject "to mortgages or other liens, the general mortgage does "not displace them. It only attaches to such interest as "the mortgagor acquires."

U. S. v. *Railroad*, 12 Wall., 362.
Ketcham v. *St. Louis*, 101 U. S., 306.

(2.) While it is clear from the principles above stated, that equity would protect and enforce the appellant's claim against the whole property, even though subsequent bond creditors should seek to avoid payment by a repudiation of the original bargain, it is to be specially noted that the bond creditors have by their whole conduct most explicitly ratified the original transaction by taking the full benefits thereof, and cannot be now heard to dispute either the amount or priority of the debt or its lien on the whole trust property.

It will be seen that both these actions were instituted directly by the bondholders, and not the trustee. They are therefore estopped by the allegations of their pleadings and the conduct of the cause.

In the original bill they allege:

"There is a large amount of real estate, docks, wharves, "depot grounds, etc., the title to which stands in the name "of said T. S. Dobbins, but which is held by him in trust "only for the said railroad company, and really belonged "to said railroad company, and which was purchased "with the money of said railroad company, and for the

"use and benefit of said railroad company, and should "be applied and appropriated to the payment of the "debts of said railroad company and forming a consider- "able part of your orator's said security for their said "indebtedness, and your orators fear that said real estate "may be wasted and misapplied by the said Dobbins, and "desire that the rights of said railroad company in the "said property should be ascertained and determined, "and that the said real estate should be conveyed to said "railroad company and subjected to the lien of the said "mortgage deed of trust." (Trans., p. 51, fol. 66.)

The prayer was to compel the holder of the legal title to such depot grounds to convey to the receiver. (Trans., p. 52, fol. 67.)

In the order appointing the receiver, the court accordingly decreed that Dobbins and others holding property in trust for the corporation, should assign and deliver over all such property. (Trans., p. 54, fol. 70.)

In the later foreclosure bill the same allegations are found. (Trans., p. 15, fol. 20.)

It also distinctly avers:

"That no separation of said mortgaged premises for "the purposes of sale could be made without very great "depreciation of the property, and great loss and damage "to the said bondholders, and to all parties interested in "the said mortgaged property." (Trans., p. 20, fol. 26.)

The bill makes a large number of lien holders parties, and prays that if any others have any "liens or interests "in said mortgaged premises, they may state and show "the same in answer to this bill, in order that the same "may be properly disposed of by this honorable court." (Trans., p. 21, fol. 27.)

On June 17, 1876, the receiver was directed to issue certificates to amount of $175,000, which were declared to be a valid first lien for principal and interest upon the entire property, income and franchises of the said railroad company (including the property purchased under this order and decree) prior to all other liens or claims thereon (except the said amounts due for the operating expenses of said railroad, and the expenses of said receivership.) (Trans., p. 55, fol. 71.)

This order further authorized the receiver "to pay such "amounts as may be due for any portions of the right of "way of said road," on receiving good and sufficient conveyances. (Trans., p. 55, fol. 72.)

In the final decree, the entire road (expressly including the depot grounds conveyed by appellant) was ordered to be sold "as one property, and not separate parcels" (Trans., p. 87, fol. 118), and the first net proceeds were devoted to payment of $160,000, principal of the then outstanding receiver's certificates. Trans., p. 88, fol. 121.)

From May 27, 1876, until after the payment of the redemption money, on April 9, 1880, the receiver had possession, on the motion of complainants, of these depot grounds and the tracks thereon and constantly ran trains thereon.

They are concluded by all these allegations and their whole conduct, from denying the paramount charge which the petitioner held upon the whole property, as against them.

"If a person accepts anything which he knows to be "subject to a duty or charge, it is rational to conclude "that he means to take such duty or charge upon himself,

"and the law may well imply a promise to perform what "he has so taken upon himself."

Brown's Legal Max., 451, 452.
Bigelow on Estoppel, 511.

Several well reasoned authorities exist, which are direct and conclusive on the very point in question.

In a case in Wisconsin, where a judgment for land damages had been rendered against a railway, and the road was afterwards sold under its general mortgage, and a new corporation organized under such purchase went into possession of the property so condemned and ran trains over the same, the Supreme court hold:

"Such a taking possession and assertion of right con- "stituted a plain election by the new company to adopt "the original taking and receive the benefit of it. It be- "comes a case for the familiar maxim: *qui sentit com-* "*modum, sentire debet et onus.* The right of the old com- "pany in the land was not paramount to those of the "plaintiff until the damages were paid. If the purchasers "under the mortgage step in and assert these rights they "must assert them subject to the condition upon which "they existed—that is the payment of the damages. A "man will be bound by that which would have bound "those under whom he claims *quoad* the subject matter."

Pfeiffer v. *Sheboygan R. R.*, 18 Wis., 165.

The same principle has been similarly ruled in

F. L. & T. Co. v. *Fisher*, 17 Wis., 117.
D. N. & B. R. R. v. *Lewton*, 20 Ohio S., 411.
West Penn. R. R. v. *Johnson*, 59 Penn. S., 290.

This court has quite recently reached a similar conclusion. In a case where bond creditors were seeking to avoid payment of debts incurred for construction of a portion of road and a bridge built with their consent, it was decided:

"It did not comport with the principles of equity for "the bondholders to assert that the piece of road from "Clymers Station to Logansport and the bridge and the "land, rolling stock and other property acquired by the "receiver, and now alleged to have been acquired by him "without authority, were subject to the lien of the first "mortgage, *and now claim the proceeds of all that "property without paying the debts incurred for acquiring it.*"

Miltenberger v. *Railroad Co.*, 106 U. S., 308.

To the same effect is

Fosdick v. *Car Co.*, 99 U. S., 256.

The suggestion that the decree below can be justified because the appellant was an intervening petitioner and not a party defendant, requires no argument.

The whole trust property was seized by the court. The bill itself was a summons to general administration. Having intervened and established her rights, the appellant was as much entitled to a full decree as though it had been an original or cross-complainant.

The court holds by its receiver, "for the benefit of "whomsoever in the end it shall be found to concern."

Fosdick v. *Schall*, 99 U. S., 251.

"A court of equity in a suit for the foreclosure of a "mortgage (upon a railway) clearly has cognizance of all

"questions relating to priority of lien on the property in "litigation as between the parties to the suit and those "whom they lawfully represent."

U. S. v. *Railroad*, 12 Wall., 362.

The well recognized practice of the English chancery is, for the court of its own motion to direct a reference to enquire what encumbrances exist affecting the estate in its custody and to adjudge and enforce them according to their priorities.

Codwise v. *Gelston*, 10 Johns., 521.
Wiswall v. *Sampson*, 14 How., 52.

Third. The error inherent in the decree of the lower court is still further demonstrated by the action of the railway company since its rendition.

The direction of the final decree provided for a sale subject to redemption, according to the statutes of Illinois. On April 9, 1880, the mortgagor corporation paid into court the full amount of money necessary to redeem its property from the sale under the general mortgage, and the court entered an appropriate decree, declaring the corporation had effected such redemption. (Trans., p. 99, fol. 144.)

By such act, of course the lien of the decree which had merged the general mortgage was fully discharged, and so far as the bond creditors were concerned, they ceased from that moment to have any encumbrance on the property or any interest in this appeal.

The rights and liens of the appellant thenceforth only concerned the corporation which had originally purchased her property. As against it, the equity is too clear to require further argument. As the court below has in its

registry, to abide the result of this appeal, a sufficient fund to fully discharge her claim and as there are no issues of fact to be disposed of, the appellant submits that this court should reverse the decree of the Circuit Court and remand the cause with specific directions to enter a decree against the fund in court for the principal and interest of her demand, as established before the master.

HENRY CRAWFORD,

Solicitor.

April, 1884.

112-8

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1881.

No. 373

ALLINE P. WOODWORTH ET AL.,
Appellants,

vs.

JOHN I. BLAIR ET AL.,
Appellees.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLEES.

E. WALKER,
SOLICITOR FOR APPELLEES.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1884.

No. 173.

ALLINE P. WOODWORTH ET AL., *Appellants*,
vs.
JOHN I. BLAIR ET AL., *Appellees*.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLEES.

The record in this cause brings to this court for review a part of foreclosure proceedings of a railway mortgage. The bill was filed by the holders and owners of all the outstanding bonds of the railroad company, instead of the trustee under the trust deed. All necessary parties were made defendants to the bill. Issues were joined and final decree entered February 12, 1879. During the progress of the cause appellant, by leave of court, filed her intervening petition therein, claiming a lien upon certain

real estate therein described, prior to the lien of the mortgage bonds.

The petition (Rec., p. 101) shows that on the first day of February, 1872, the petitioner entered into negotiations with Thomas S. Dobbins, president of the Chicago and Pacific Railroad Company, for the purchase of certain real estate described in the petition, for the use and benefit of the company. That said negotiations finally resulted in the purchase of the property, and that a conveyance was made to Dobbins by deed bearing date February 1, 1872. The petition further shows that the consideration for the property so conveyed was $58,243.80, of which $5,824.40 was paid in cash, and the balance was secured by ten promissory notes of the said Thomas S. Dobbins, and by mortgage or trust deed conveying the property to John A. Yale, trustee. The petition also charges that this property was purchased for the use and benefit of the railroad company, and that conveyance was made to Dobbins at the special request of such company.

The prayer was as follows: "In consideration whereof, "and in consideration of the foregoing, your petitioners "pray that this honorable court may direct the receiver to "pay to your petitioners the amount due upon said notes, "according to the tenor and effect thereof, out of any "funds in his hands not otherwise appropriated, or that "by proper provision in any decree to be rendered in "this cause, charging the proceeds of any sale directed "by said decree, with the payment of the said notes, ac-"cording to the tenor and effect thereof."

On the 25th of March, 1878, this petition was referred to Henry W. Bishop, master in chancery, with directions to "examine and report thereon to the court."

On the 11th of July, 1878, the master filed his report, reciting that he had been attended by counsel for the petitioners, and also by the defendant's counsel, and that witnesses were examined by both parties; that their testimony was duly taken and returned to the court, and made a part of the report. The report concludes as follows: "From an examination of the testimony taken in "this cause, and the exhibits admitted in connection there-"with, I am satisfied that the material allegations in the "petition are sustained by the proofs, and that there is "due to the petitioners upon the notes secured by said "trust deed to June 8, 1878, $59,910.10, *for the payment* "*of which I respectfully recommend that an order be en-*"*tered.*"

On the 30th of November, 1878, prior to any action of the court upon such report, the appellee's counsel filed the following objections to the entry of an order as prayed in the petition:

"The solicitors for the complainants in the above en-"titled suit object to any order being entered in said suit "to pay any amount found to be due to the complainants "respectively upon the notes proved in evidence before "the master, out of any funds in the hands of the receiver "of the Chicago and Pacific Railroad Company, or out of "the proceeds of any sale directed to be made by this "court of the property of said railroad company." (Rec., 104.)

It also appears that the main cause was referred to the master, and that after hearing evidence, he reported to the court, among other things, the amount due the respective bondholders, and upon this report the court entered final decree in the cause, finding and adjudging that all the material allegations in said bill of complaint con-

tained and set forth, were true, and that the equities were with the complainants as against the defendants therein. The court also decreed that the amount so found due the respective bondholders, was a first and paramount lien upon all of the property of said railroad company, and that in case of the default in the payment by said company of the sums so found due the respective bondholders, the property and franchises of said railroad company should be sold as an entirety, by the master, at public sale. The court also directed (p. 94) that "the said "sale be made without prejudice, to the following mort- "gages on portions of said depot grounds, which mort- "gages and the amounts thereby secured, are prior liens "to the mortgages foreclosed in said suit, as to the prop- "erty in the said mortgages respectively described, but "are not a lien upon any other property."

Appellant's lien upon the property described in her mortgage was thereby expressly preserved, and the sale was directed to be made without prejudice to her equities. To the entry of this decree, the appellant and other intervenors filed eight objections going to the substance of the decree of foreclosure and order of sale (Rec., 105).

The substantial objections are, that the court decreed against appellant's claim of priority of lien upon the company's entire property, limiting her equities to the property described in her trust deed, and refused to decree that the amount found due her by the master, should be paid out of the proceeds of sale.

On the 14th of April, 1879, the appellant entered her formal motion for appeal from the final decree of foreclosure and sale entered in the cause. (Rec., 106.)

Upon this prayer the court entered an order allowing

an appeal, "from so much and such parts of said decree "as affected the interest of the appellant, that is to say, "the order that the sale of said railroad, its property and "franchises, be made without prejudice to the mortgage "dated February 1, A. D. 1872, recorded in Cook county "register, book 149, page 419, executed by Thomas "Dobbins to John A. Yale, to secure the sum of $52,-"419.92, with interest, &c. * * The said appeal shall "not be deemed to operate as a *supersedeas* to the sale of "said mortgaged property under said decree, nor in any "way to delay said sale, but only to operate to delay the "distribution of the proceeds of such sale to the amount "to fully secure the amount due on said mortgage from "Dobbins to Yale."

To this order appellant also filed exceptions, and tendered a bond in the penal sum of $150,000, insisting that said appeal should be made a full *supersedeas* to the operation of said decree. (Rec., 108.) Subsequently the appellant filed another bond in the penal sum of $1,000, and thereupon perfected her appeal.

Appellant's counsel assigns the following errors:

"*First.* The Circuit court committed error in refusing "to decree full payment of the petitioner's claim out of "the proceeds of sale of the railway, before payment to "the bondholders.

"*Second.* In entering a decree subject to the lien of "petitioner, instead of enforcing and satisfying the same "out of the sale proceeds.

"*Third.* In making full disposition of the proceeds of "sale and the title and possession of the railway, without "enforcing in any way the prior lien of the petitioner, "which had been fully established in the cause."

In this assignment the appellant claims that her lien was not only a first and prior lien upon all the company's property, but also that such lien had been fully established in the cause.

Appellant's counsel claims that the record shows conclusively that the property described in appellant's mortgage was in the possession of the railroad company as a part of its terminal facilities in the city of Chicago, and that as the date of her mortgage was prior to the date of the trust deed securing appellee's bonds, her lien was prior to that of complainant's, and that the court, by decree, should extend such lien over the entire property of the company. On page 8 of his argument he says: "The "master made a report sustaining the claim as to priority "and amount, and no exception was ever filed to the "master's finding."

By reference to the master's report it will be seen that all that the master attempts to find is the amount due upon the notes held by the petitioner, and that the material allegations in the petition are sustained by the proof. The petition nowhere charges that the lien of the appellant was prior to the lien of the complainants as bondholders. It recited the contract between Dobbins and the appellant, the date of the transaction, the property conveyed and the amount of purchase price, and the further fact that the deferred payments were secured by the notes of Dobbins, and by a mortgage upon the property to Yale, as trustee. Also, that the company entered into possession of the property, and that it was occupied and used by the receiver appointed by the court in this cause, during the time of his receivership. By the order of reference, the master was not directed to find and report his conclusions upon the evidence, but only to examine the

petition of the intervenor, and report thereon to the court. In such report he found the amount due the intervenor on the 8th of June, 1878, and recommended payment of the same; but he did not attempt to find or report that the amount so found due was a prior lien to the bonds held by complainants. It is also asserted by appellant's counsel that the complainants in their bill charge, that this and other property had been purchased by Dobbins, and was held by him in trust for the use and benefit of the railroad company, and that their trust deed covered all the property so held.

Referring to the trust deed (Rec., 25 and 26) we find that the company granted and conveyed to the trustees as security for the payment of the mortgage bonds, all the right of the company to construct and maintain along said route a railroad, and all rights, privileges and franchises belonging to said company, together with its rolling stock and other property appertaining to said railroad, and all real estate now owned or possessed, or acquired, or hereafter to be owned, possessed or acquired, to which said company might be entitled through or by reason of the construction of said railroad. By the terms of the grant the lien of the bondholders was limited to the lands and real estate which the company owned at the date of the trust deed, and the property it might thereafter acquire, by purchase or otherwise.

Appellant's counsel (Brief, p. 14) claims that the apellees are estopped from denying that the property in controversy had been acquired by the company prior to the execution of their trust deed by the allegations of their bill, and the conduct of the cause. It is true, as asserted by counsel, that appellees, in their bill, charge "that there "is a large amount of real estate, docks, wharves and

"depot ground, the title to which stands in the name of "said T. S. Dobbins, but which is held by him in trust for "the said railroad company, and really belong to said com- "pany, and which was purchased with the money of said "railroad company, and for its use and benefit," etc.

Answering this charge, the company (Rec., 70) says:

"It is informed and believes that the title to certain real "estate, etc., used by defendant for the purposes of said "railroad, is in said Dobbins, but defendant is not aware "that the same was purchased with money belonging to "defendant, or that the same belongs to defendant, but, on "the contrary, defendant believes that all the title of all "property of right belonging to defendant, or purchased "with the money of defendant, is in defendant, and that "the property by complainant referred to, as being held "by said Dobbins, was never bought by the defendant, or "with the means of defendant, but by said Dobbins, and "with his means or that of said Dobbins & Company."

The joint and several answer of Dobbins, Bowen and Wilcox also denies this charge, as follows (Rec., 76):

"And these defendants deny that there is a large "amount, or in fact any amount, of real estate, docks, "wharves, depot grounds, etc., the title to which stands in "the name of T. S. Dobbins & Company, or any one of "the members of said firm, and which is held by him or "them in trust only for said railroad company, and really "belongs to said railroad company, and was purchased "with the money of said railroad company, and for the "use and benefit of said railroad company, etc., as alleged "in said bill of complaint. And these defendants say that "the title to all lands purchased with the money of said "railroad company and of right beionging to said rail-

"road company, is in the said railroad company, so far as "these defendants are informed; and these defendants say "that while it is true that there are some lands the title to "which is in said T. S. Dobbins, and which, or some por- "tion of which, are used and occupied by said railroad "company for the use of said road, yet these defendants "say the same was bought by the said Dobbins, or by "these defendants with the money or credit of said Dob- "bins, or these defendants, and not with the money or "credit of said railroad company; and these defendants "say that all such lands held by them, or said Dobbins, "and used or necessary to be used by said railroad com- "pany in the operation of its said road, will be most "cheerfully conveyed by said Dobbins and these defend- "ants to said railroad company, if it will pay the amount "paid by said Dobbins and these defendants therefor, and "assume and discharge all the liabilities of these defend- "ants by reason of the purchase of such lands."

It therefore appears that the title to the real estate in controversy is put in issue by the pleadings in the cause. The appellees charge that a large amount of real estate, without describing it, is held by Dobbins in trust, but that as a matter of fact it was purchased for said company, and the purchase money therefor paid by the company. This charge Dobbins denies, but admits that he purchased certain real estate, a part of which was necessary to the operation of the road, and which, as a matter of fact was in the use of the company, but says that he purchased the same with his own means or credit, and declares his willingness to convey to the company or to the receiver appointed by the court, all such property upon the payment to him of all moneys advanced, and a discharge of all liabilities assumed by him in the purchase of such property.

Appellant's counsel also says, that in the order appointing the receiver, the court accordingly decreed that Dobbins and others holding the property in trust for the corporation, should assign and deliver over all such property. The court in its decretal order appointing Whitman, receiver (Rec., 54), ordered the Chicago and Pacific Railroad Company, and the defendants Dobbins, Bowen and Wilcox, or whomsoever may have possession thereof, to assign, transfer and deliver over to said receiver on oath, under direction of Henry W. Bishop, a master of this court, all the property real and personal, wheresoever found, and all contracts for the purchase of land, and all other equitable interests, things in action, and other effects which belong to or were held in trust for said defendant railroad company, etc.

This is the usual form of order in the appointment of receivers for railroad properties, and as the record does not show, and as it is not claimed or pretended that Dobbins at any time conveyed to the receiver the property in controversy, the plain and direct inference is that the title of this property was not in the railroad company, and that it had neither interest nor equities touching such property that could be conveyed to the receiver under the order of court.

The trust deed of Dobbins to Yale is not in the record. This court can know nothing of its covenants except as charged in appellants' intervening petition, and it here appears that the railroad company had no title whatever to the property, that the legal title was in Yale, and Dobbins held the equity of redemption.

The petition charges that such real estate was necessary to the conduct of the business of the railroad, and

that it was purchased for the use and benefit of such company. It is true the partial record presented does not show that either the appellants or the railroad company filed answers to such petition, but such answers are not required by the rules of practice of the Circuit court. The master was attended by petitioner's counsel, and also by the counsel for appellees, and it appears that both parties introduced evidence upon the hearing. This evidence is not preserved in the record, and cannot now be considered. It is true that the master recommended the payment of the money due from Dobbins to the appellant, but did not recommend that it should be paid out of the funds in the hands of the receiver, or from any funds that might come into the hands of the court by sale of the property under the decree.

The master's report was filed July 11, 1878, and the record shows that on the 30th of November, 1878, the appellees filed in the case their written objections to the entry of any order "directing the payment of the amount "found due by the master, out of any funds in the hands "of the receiver, or out of the proceeds of any sale di- "rected to be made by this court of the property of said "railroad company." (Page 104.)

The final decree in the cause was entered December 22, 1879. Exceptions to the enrollment of this decree were filed by appellant on the 18th of December, and prayer for appeal was entered by appellants on the 14th day of April, 1879. On the 19th of April the record shows (105) that the intervening petitioners and the receiver in said cause, appeared before the court, and that after full hearing a decretal order was entered dismissing the intervening petition without notice.

In determining the rights of these parties the court must settle what property and interests are to be regarded as covered by the mortgage from Dobbins to Yale, and these rights will be controlled by, and limited to, the covenants and grants contained in such mortgage. If the language of the instrument is plain, that must govern, and no supposed intention of the parties drawn from other circumstances can control it. It is apparent from the record that this mortgage was before the Circuit court and received a construction from that court, but whether the court erred or not in such construction, its decrees in that respect cannot be considered here, for the reason that the mortgage and evidence upon which the decretal order of the court below was entered, is not before this court for review.

The claim of counsel that appellant has priority of lien over appellees upon the entire road of the company, is not supported by authority. *Mullen* v. *Dows*, 94 U. S., 449, cited by counsel, presents no question or controversy between lien holders. That case was a foreclosure of a mortgage executed by a consolidated company, covering the entire property of the company situated in the States of Missouri and Iowa. The court held that the consolidation was lawful, the mortgage properly executed, and that the entire property could be sold under one decree of foreclosure, notwithstanding the fact that the property was situated in both states. The principal contention was over the question of jurisdiction of the court over the *res*. The court held jurisdiction, and decreed sale of the entire property.

Brooks v. *Railway Company*, 101 U. S., 443, and *Meyer* v. *Hornby*, 728, involve the construction of the

statutes of Iowa, providing for liens for labor and materials furnished by contractors in the construction of railroads within that state. It was a controversy between the contractors and the bondholders over the priority of their respective liens. This court followed *Neilson* v. *Iowa East Railway*, 44 Iowa, 71, and other cases of similar import, involving similar questions. It gave the contractors priority of lien over a mortgage executed prior to the date of the contract. On page 451, this court, speaking by Mr. Justice MILLER, says:

"The doctrine, or rather the statute which the courts "construe (referring to the Iowa cases), as giving a per- "manent lien under such circumstances, was in existence "when the mortgage of the appellants was made. They "entered into and became a part of their contract. They "knew that the road was yet to be built, and that while "such building would add to the value of their security, "the law gave to the men whose money and labor built "it, a lien superior to that of the mortgage. Now that "the venture in which both embarked is to end in loss, "to the one or the other, I think there is no judicial pro- "priety in straining the law to limit the rights of one party "rather than those of the other. If the law, by its fair "construction, gives the mechanic a lien for a few thou- "sand dollars on the whole road instead of a part, the "law should prevail."

Assuming that the property covered by the mortgage from Dobbins to Yale is a necessary part of the railroad, still it does not follow that by a decree of court the lien of such mortgage can be extended over the entire property of the company, or upon any property other than that conveyed by the trust deed. If it is a necessary part

of the road, and the whole property is to be treated as an entirety, still the company had power and authority to execute a mortgage embracing but a part of their property. This power is recognized in *Pullen* v. *Cincinnati and Air Line Railroad Company*, 4 Bissell, 35.

This was a foreclosure of a sectional railroad mortgage; from a statement of the facts, it appears that the legislature of Indiana, in 1848, enacted a charter authorizing the company to construct a railroad from Richmond to New Castle, Indiana, a distance of about twenty-eight miles. In 1851 the charter was amended, authorizing a further extension of the road, and under this amended charter the road was constructed to Logansport, Indiana, a distance of one hundred and eight miles. On the 25th of February, 1852, the company issued its bonds to the amount of $300,000. Also a trust deed to secure their payment. By this trust deed the company conveyed all the present, and in future to be acquired property of the said New Castle and Richmond Railroad Company; "that is to say, from Richmond to New Castle as afore-"said," etc. In April, 1853, the corporation executed another deed of trust, to secure the payment of other bonds covering all the property of the company between Richmond and Logansport. This last mortgage was foreclosed in the Circuit court of the United States, for the district of Indiana, in 1860, and under that decree all the property of the company was sold, *subject, however, to the lien of the sectional mortgage of 1852.*

In the Pullen case, among other things, it was contended, that the lien of the sectional mortgage operated upon the entire road; that the court should decree that the railroad and appurtenances were an entirety, and that the property should be sold under the decree as such en-

tirety. The court, however, held that by the terms of the deed the lien should be confined to the property therein described. Litigation was continued until 1873, when the case was disposed of by final decree. (Reported in 5 Bissell, 287.)

During the progress of the cause, Mr. Justice Davis entered an interlocutory decree, holding that the mortgage of 1852 covered the railroad and its revenues between Richmond and New Castle, but not the road or income of any other part of the road. And it was also so provided by final decree.

In this case the complainant as trustee of a sectional mortgage claimed that he was in equity entitled to a sale and conversion of the whole road, as a means of making available and productive his security on a part of it. The claim was founded on the equitable interpretation of the purpose of the parties as shown, not alone by the words of the contract, but also and mainly, in the nature of the subject matter, and the circumstances of the transaction, and on the legal entirety of the road, and the legal unity of all its parts, but the court held otherwise.

THIS COURT IN THE CONSTRUCTION OF RAILWAY MORTGAGES, AND THE EXTENT OF BONDHOLDERS' LIENS, DOES NOT HOLD THAT SUCH LIEN ATTACHES TO AFTER ACQUIRED PROPERTY UPON THE PRINCIPLE THAT IT IS AN INCIDENT TO THE RAILROAD AS AN ENTIRETY, BUT ONLY WHEN THE MORTGAGE OR TRUST DEED IN EXPRESS TERMS CONVEYS SUCH FUTURE ACQUIRED PROPERTY TO THE TRUSTEES.

IT HAS ALSO UNIFORMLY HELD, THAT A MORTGAGE OF AFTER ACQUIRED PROPERTY, CAN ONLY ATTACH TO SUCH

PROPERTY IN THE CONDITION IN WHICH IT COMES INTO THE MORTGAGOR'S HANDS.

Dunham v. *Railroad*, 1 Wall., 254.
Galveston v. *Cowdry*, 11 Wall., 459.

One of the first cases in this court involving a construction of similar mortgages, was *Pennock* v. *Coe*, 23 Howard, 124. That was also a controversy between lien holders. It was a bill filed by Coe as a trustee under the mortgage to enjoin Pennock & Hart, judgment creditors, from the sale of property on execution, in satisfaction of their judgment. The mortgage conveyed all the present and future acquired property of the company. The judgment creditors claimed that the mortgage to the trustee was void, or inoperative, as respects certain locomotives or cars which were levied on under the execution of the defendants, inasmuch as they were not in existence at the date of it, but were constructed and placed on the road afterwards, being subsequently acquired property of the company. It was asserted, that the maxim that a person cannot grant a thing which he has not, was supported by the authorities of all the courts, and that that principle would defeat the lien of the bondholders. But this court held that this principle had no application to the case.

"The mortgage here does not undertake to grant *in* "*presenti* property of the company not belonging to them "or not in existence at the date of it, but carefully distin- "guishes between present property and that to be after- "wards acquired. Portions of the road had been ac- "quired and finished, and were in operation when "the mortgage was given upon which it is conceded "it took effect. Other portions were acquired after- "wards, and especially iron and other fixtures, besides

"the greater part of the rolling stock. The terms of the "grant or covenants are, all present and all future to be "acquired property of the first part. The inquiry here "is, not whether a person can grant *in praesenti* property "not belonging to him, but whether the law will protect "the grant and conveyance to take effect upon the prop- "erty when it is brought into existence, and belongs to "the grantor, in fulfillment of an express agreement "founded on a good and valuable consideration, and this "when no rule of law is infringed, or the rights of the "third party prejudiced."

In this case the court held that the lien attached to future acquired property not as a mere incident of the road itself, but under express grants and covenants of the mortgage.

The same rule is applied in *Shaw* v. *Bill*, 95 U. S., 15.

The court did nothing more than enforce the contract as made by the parties. It decreed that the mortgage covered future acquired property, for the reason that such was the contract of the parties, and the court, by its decree, gave expression to such contract.

In this case it was also held that future acquired property not within the terms of the mortgage is not covered by it, and it is also so held in *Dinsmore* v. *Racine & Mississippi R. R. Co.*, 12 Wis., 649, and in *Walsh* v. *Boughton*, 24 Ohio, 28.

We have not been able to find any case in which this court has held that such lien would attach to future acquired property, unless it was expressly so covenanted in the mortgage.

In *U. S.* v. *New Orleans Railroad*, 12 Wallace, 364, the United States claimed a superior equity in, and lien upon the property, to that of the bondholders under the mortgages, under the reserved lien upon the property at the time of its sale to the company. This court, speaking by Mr. Justice BRADLEY, says:

"The appellants contend that the decision upon the "facts was erroneous. That the mortgages, being prior "in date to the bond given for the purchase money of "these locomotives and cars, and being expressly made "to include future acquired property, attached to the "property as soon as it was purchased, and displaced any "junior lien. This, we apprehend, is an erroneous view "of the doctrine by which future acquired property is "made to serve the uses of the mortgage. The doctrine "is intended to subserve the purposes of justice, and not "injustice. Such an application of it, as is sought by the "appellants, would often result in gross injustice. A "mortgage intended to cover future acquired property, "can only attach itself to such property in the condition "in which it comes into the mortgagor's hands. If that "property is already subject to mortgages or other liens, "the general mortgage does not displace them, though "they may be junior to it in point of time. It only "attaches to such interests as the mortgagor acquires; "and if he purchased property and gave a mortgage for "the purchase money, the deeds which he receives and "the mortgage which he gives are regarded as one trans-"action, and no general lien impending over him, whether "in the shape of a general mortgage or judgment, or "recognizance, can displace such mortgage for purchase "money."

Following this and other authorities, the Circuit court

in its final decree was careful to preserve the lien of Yale and Woodworth upon the property sold to Dobbins, and did not attempt to interfere with such lien by its final decree. It left the lien and the equities of the appellant precisely as they stood at the filing of the bill, and at the entry of the decree.

It is apparent from these authorities that, had appellant conveyed the property to the railroad company instead of Dobbins, receiving back a trust deed to secure the payment of the purchase money, that in the foreclosure of such trust deed or mortgage the court by its decree could not extend appellant's lien beyond the property described in her trust deed or mortgage. It could do nothing more than enforce the contract between the parties.

In this record it does not appear that there was ever any contract, express or implied, that appellant, as security for the unpaid notes or purchase money, should have any lien upon property other than that conveyed by her to Dobbins, and back from Dobbins to Yale, much less that the mortgage lien should attach to the after acquired property of the railroad company.

Again, a mortgage by a railway company, does not pass any interest in land which it has occupied for its uses, but which was not acquired by contract, or by the statutory proceedings in eminent domain.

This proposition is well stated in Jones on Railroad Securities, Section 633:

"Its interest in such land is a mere easement, and not "an estate in the land subject to lien or execution. The

"landowner's title to damages is paramount to a mort-
"gage given by the railroad company, before the dama-
"ges have been assessed and paid. Although he allows
"the company to construct a road over his land, and to
"use it without payment of damages, and thus waives
"the trespass, he does not necessarily waive his claim for
"damages, and a prosecution of his claim to judgment is
"conclusive against such waiver. A sale of the road un-
"der a mortgage before the damages are paid, does not
"divest the landowner of his right to recover compensa-
"tion for the occupancy of his land from the purchaser."

In the State of Illinois, where the land in controversy is situate, the law is, that where a railroad corporation has taken possession of the land of another without his consent, and without condemnation, and wrongfully holds the same for the use of its road, the law affords the owner two remedies—an action of ejectment, or an action to recover the value of the land taken. He is not driven to proceedings by *mandamus* to compel a condemation.

Smith v. *C., A. & St. L. R. R.*, 67 Ill., 191.

This case is followed in *C. & R. I. R. R. Co.* v. *Hopkins*, 90 Ill., 316.

In this case Hopkins derived title by purchase under a decree of court while the railroad company was in possession of the property. The railroad company had not acquired title by contract or otherwise, and the court held that it had no easement or right of way, and that an action of ejectment by Hopkins would lie.

In *Western Penn. R. R. Co.* v. *Johnson*, 59 Penn. St., 290, held, if a railroad company executes a mortgage on its road, franchises, etc., and afterwards occupies land for

its uses, and damages are assessed, it has no interest in such land on which the mortgagee can operate, and a sale under the mortgage would not convey the title, nor extinguish the lien for the damages.

In this decree there certainly is no error apparent upon the record to the prejudice of appellant, and it therefore follows that there is nothing in such decree or record, supporting the assigned errors. The decree found the amount due the several appellees upon the bonds held and owned by them respectively, and directed a sale of the property in satisfaction of such decree, subject, however, to the claim, or lien of appellant, upon the property therein described. After, as well as before, the sale under this decree, appellant interposed a claim of payment of the entire amount of Dobbins' indebtedness to her, out of the funds in the hands of the receiver, or to be realized from a sale of the property. The question before the Circuit court, and presented to this court under the record is, whether the appellant is entitled to such payment out of the funds realized from a sale of the property under appellee's decree. It is true that the railroad company does not resist such payment, nor has it any interest in the matter adverse to appellant. It appears from the record that the statutory right of redemption was reserved by the terms of the decree, and that subsequently the railroad company redeemed the property from such sale, in pursuance of the decree and the statutes of the State of Illinois. Under such circumstances, however, the redemption does not affect the appellees or those claiming under them. In all such cases, where property is redeemed from sale under decree or execution, the plaintiffs receive simply the amount of money realized from the sale, and the amount paid by the defendant for

redemption, goes to the purchaser of the property, and not to the plaintiff of record. In this case, the appellees had no interest whatever in the matter of redemption of the property from such sale. The decree had been executed in their favor, the property sold, and the purchase money paid to the clerk of court, was a fund belonging to the appellees under and in pursuance of the decree. The property conveyed to Yale, was not sold under the decree, and did not contribute to the fund in court. If the decretal order of the Circuit court is reversed, and this court, by its mandate, directs the payment of appellant's claim, in effect, it compels appellees to discharge a present lien of upwards of seventy-five thousand dollars, now resting upon property in which the appellees have not, and never had, either by contract or decree of court, any interest. We have shown that the legal title of the property in controversy was in Yale, and the equity of redemption in Dobbins. If, by the mandate of this court, appellant's lien shall be discharged by the payment of her claim out of the fund in court, Dobbins' equity of redemption becomes a legal title, and so far as the record discloses, he can hold the property adversely to both the purchasers and the railroad company.

As the record now stands, the appellant can enforce the payment against Dobbins by direct action against him, or against the property by foreclosure proceedings, or both, in one action. Appellant has from the first, a complete remedy under her contract, and the final decree and sale thereunder does not prejudice her remedy. The decree, sale, and redemption, restores the property to the railroad company, free of appellee's lien, and if appellant's claim of equitable lien can be maintained, she may now proceed to foreclose her mortgage, and by decree

subject to sale the railroad and its appurtenances as an entirety, in satisfaction of her claim against Dobbins.

We submit that the appellant has not been prejudiced by the decree, and that the Circuit court committed no error in dismissing appellant's petition for intervention.

Respectfully submitted.

E. WALKER,

Sol. for Appellee.

CHICAGO, Oct. 1, 1884.